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Supreme Court, U.S.
FILED

961903 MAY 29 1997

OFFICE OF THE CLERK

No. _____

In the SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1996.

Kathleen M. Abbey,
Petitioner

vs.

Sverdrup Corporation and Sverdrup Technology, Inc.,
Respondents

On PETITION for WRIT of CERTIORARI
to the ALABAMA SUPREME COURT

PETITION for WRIT of CERTIORARI

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May 28, 1997.

100pp

QUESTIONS PRESENTED for REVIEW

1. What determines the 'scope of investigation' for a civil claim corresponding to a charge filed with the Equal Employment Opportunity Commission relating to a statute the Commission enforces: the Intake Questionnaire, the charge form, the Determination letter, and/or the contents of the investigative file?

2. Should the designated category of discrimination, i.e. age, sex, race, etc. assume more importance than the fact that the civil claim is identified as 42 USC §2000(e)-seq, sec. 703 or 704 (Title VII)? Can an amendment to alter or add a category of discrimination where the facts remain largely unchanged be viewed as a procedural technicality and not fatal to the claim?

3. In the absence of Rule 54(b) certification of partial summary judgment with respect to one of the claims, can the claim be re-instated and amended, especially in the case of mitigating circumstances such as the late acquisition of Discovery documents and depositions?

PARTIES

(All parties contained in caption of case)

The petitioner Kathleen M. Abbey is an adult resident of North Carolina. The Huntsville facility is the principal site of business in Alabama of Sverdrup Technology, Inc. (TN headquarters). This company is a wholly owned subsidiary of Sverdrup Corporation (MO headquarters). Sverdrup Corporation owns or is affiliated with other subsidiaries including Sverdrup & Parcel Consultants, Inc., Sverdrup Investments, Sverdrup Building, Sverdrup Civil, Sverdrup Environmental, Sverdrup Facilities, Sverdrup Southern Constructions, and Sverdrup Associates. The status of non-wholly owned subsidiaries is unknown.

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COMMISSION OPINIONS AND ORDERS

EEOC Birmingham Office Closed Discrimination Charges Without Full Investigation, Report to Congressional Requesters, GAO, #93-7258 (1993) 18

MISCELLANEOUS

Women's Legal Defense Fund for the Women's Initiative, *Employment Discrimination Against Midlife and Older Women,* VOL I, A Report, American Association of Retired Persons, 1996.
C.J. Lanctot, *The Defendant Lies and the Plaintiff Loses: The Fallacy of the "Pretext-Plus" Rule in Employment Discrimination Cases,* Hastings Law Journal, 43, 57 - 141, 1991. 19

CITATIONS to RELEVANT JUDICIAL OPINIONS and ORDERS

1. Judgment of the Alabama Supreme Court reversing Alabama Court of Civil Appeals: Ex part Sverdrup Corp., [Ms. 1951510, November 22, 1996]__ So. 2nd___(Ala. 1996). Application for Rehearing denied on Feb. 28, 1997.
2. Judgment of the Alabama Court of Civil Appeals reversing Partial Summary Judgment: Abbey vs. Sverdrup Corp., [Ms. 2941150, April 5, 1996]___So. 2nd ___ (Ala.Civ.App. 1996). Application for Rehearing to the Alabama Court of Civil Appeals denied on May 17, 1996.
3. Kathleen M. Abbey vs. Sverdrup Corp. and Sverdrup Technology, Inc., No. CV91-373Y/LHL (June 26, 1995) (Amendment to Order Granting Partial Summary Judgment to make such judgment final (Rule 54(b), Ala.R.Civ.P.)).
4. Kathleen M. Abbey vs. Sverdrup Corp. and Sverdrup Technology, Inc., No. CV91-373Y (July 29, 1993) (Order of Mis-trial by Jury and placement on administrative docket).
5. Kathleen M. Abbey vs. Sverdrup Corp. and Sverdrup Technology, Inc., No. CV91-373Y (July 20, 1992) (Order granting summary judgment on Count VII).
6. Kathleen M. Abbey v. Sverdrup Technology, Corp. DETERMINATION on REVIEW, Right to Sue Letter, Charge No. 253900307 (Feb. 28, 1991).

JURISDICTION

The Alabama Supreme Court reversed the judgment of the Alabama Court of Civil Appeals on November 22, 1996. An Application for Rehearing was timely filed and overruled by the Alabama Supreme Court on February 28, 1997. Jurisdiction of the United States Supreme Court is invoked under Rule 28 USC Appendix, Rules 10 - 13 and under Rule 28 USC section 2104.

The decision of the Alabama Supreme Court was

conclusive on a final judgment involving a federal question. The pertinent federal law is 42 USC § 2000(e)-et seq. and its implementation through C.F.R. Title 29 Chapter XIV (sections 1600-1700). The remainder of the claims listed on the civil complaint relate to state law. No other issues have been raised with regard to federal law in the Defendant corporations' affirmative defenses and answers to the Amended Complaint.

The Defendants have advanced statements regarding their relationship with the government contracting agency, NASA, in defense of their action. The exact nature of this relationship has been clarified for the Trial Court by inclusion of the RFP and contract #NAS8-37814 in the Record on Appeal by Plaintiff Abbey. In addition, Abbey has filed copies of relevant portions from the Code of Federal Regulations governing the agency/contractor relationship (Titles 48, 41, 14, and 29) with the Trial Court (5/1/96). The nature of the government/contractor relationship was elucidated by Abbey in the Appellant's Reply Brief (Dec. 29, 1995, pg. 3).

RELEVANT STATUTES and REGULATIONS

1. Rule 54 (a) and (b) - Alabama R.Civ. P. and Fed.R.C.P. - Federal and state
versions are identical.
2. Rule 56 (f) - A.R.Civ.P. and Fed.R.C.P. - Federal and state versions are identical.
3. 29 C.F.R., Chapter 14, sections 1600 - relevant excerpts listed in Appendix
4. 42 USC § 2000(e)-et seq. - relevant excerpts listed in Appendix

STATEMENT of FACT and CASE

The original complaint was filed in Madison County Circuit Court on Feb.15, 1991 (C 1-3, 4 - 15)[1] by counsel for Kathleen M. Abbey against Defendants, Sverdrup Technology, Inc. and the parent, Sverdrup Corporation. On May 24, 1991 within ninety days of receipt of a final EEOC Determination of Review and right-to-sue letter (A 17)[2], the complaint was amended to include a seventh count (Title VII) of Discrimination (A 50).[3] On June 6, 1991 the company and corporation filed an amended Answer which included the following affirmative defense:

> 1. Allegations contained in Count Seven of the Complaint include claims not raised previously in any charge of discrimination filed by the plaintiff with the Tennessee

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[1] Designations to the Record on Appeal: "C" refers to the first volume; "C-Supp" to the supplementary volumes; "C-Exh" refers to documents approved for inclusion on Nov. 7, 1995. .

[2] "A" refers to the Appendix to this Petition for Writ of Certiorari.

[3] Paragraphs #51-54 of the Amended Complaint (A 59-60) reference events documented in the EEOC file (A 60-70).

> Human Rights Commission. Count Seven raises an entirely new basis for alleged acts of discrimination. Accordingly, claims made in Count Seven should not be allowed by the Court (C 29 - 32).

The background associated with filing of the Charge with the EEOC can be summarized as follows:

1. Abbey contacted the corporate headquarters in Tullahoma, TN in September, 1989 (C-Supp, pg. 49 - 50) concerning the failure of the Huntsville, AL branch to hire her at their facility after the NASA contract had been awarded to Sverdrup. She then wrote to the Office of Contract and Compliance Programs, [4] to file a complaint. The OFCCP referred her to the EEOC (C-82, 83) in November 1989. On December 18, 1989 she visited the EEOC Boston Office to formally file the charge. (A 10). She also submitted another copy of the notes originally sent to the OFCCP to establish the basis for the agency investigation. (A 62). After much discussion, the EEOC staff insisted that the number of categories selected on the Intake Questionnaire be reduced to one category, sex, on the final typed EEOC charge (A 6).[5]

After Abbey filed the charge, it was referred to the TN office for investigation[6]. Questions were sent to the Respondent, Sverdrup[7], and a number of different investigators phoned Abbey. The calls were not transcribed and according to EEOC policy (A 35). Abbey did not acquire the materials

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[4] Sept. 27, 1989, C-Supp, 64-65, 84-90, 94; C-Exh #41, Exhibit No. 31

[5] As described in 29 C.F.R. § 1604.05, this was a pro se filing. Abbey's attorney sent the EEOC a notice of appearance immediately preceding receipt of the Final Determination Review Letter.

[6] C-Supp 10, 24, 27 - 29,31

[7] C-Supp 32, C-Exh #45

submitted by the Respondents or the remainder of the EEOC file until after the Final Determination and Right-to-Sue letter had been issued (A 37,38) . In April 1991, Abbey obtained the contents of the EEOC file through the Freedom of Information Act (C-Supp 3-6). The contents of the file (encompassing the scope of the EEOC investigation) included

1) Intake Questionnaire timely submitted by Abbey on Dec. 18, 1989. [8]

2) EEOC charge form completed and signed by Abbey on Dec. 18, 1989 [9].

3) Outline of events submitted to the EEOC by Abbey on Dec. 1989[10]. This included conversations which occurred in the waiting period after she had accepted the Sverdrup offer and prior to the announcement that Sverdrup had been awarded the contract. In particular, she referenced a phone conversation with Sverdrup employee, Mike Barton, in April 1989, and which she thought was linked to the decision not to honor the offer later.

4) Extra copy of the Sverdrup employment application, showing that the form requested such information as "Reason for leaving or desiring change" from previous jobs. (C-Supp 51 - 53) and a copy of a few pages from the federal SF-171 form (C-Supp 54 - 55) typically showing that she usually disclosed that she had filed EEOC complaints against a previous employer. These two items were supposed to justify a request for a copy of Abbey's completed employment application from Sverdrup.[11]

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[8] C-Supp 70, C-Exh #41, Exhibit No. 27.

[9] C-Supp 20.

[10] C-Supp 34 - 38, C-Exh #41, Exhibit No. 3.

[11] The copy of the completed employment application (C-exh #44) was later obtained as a result of Discovery Requests and did show that Abbey disclosed to Sverdrup that she had previously filed an

5) Excerpt from the NASA RFP describing the position of Senior Engineer submitted to the EEOC by Abbey.[12]

6) Evaluation letters from NASA personnel submitted to the EEOC by Abbey to show that she was not considered a problem employee as alleged by the company.[13]

7) The list of questions sent to the Respondent company, Sverdrup Technology, by the EEOC. [14]

8) The company response to the EEOC questions.[15] The company attributed their failure to hire Abbey, in part, to a phone conversation with employee Mike Barton in April 1989. During this phone call, Abbey had discussed whether the employee's particular determination of suitability for a position was based on criteria which would have an adverse impact on women applicants (A 62).[16] As a result, Barton had characterized her as "Nothing but trouble" to other Sverdrup employees in Huntsville, AL. (A 71)

9) Other notes and documents concerning the investigation contained in the EEOC file. (C-Supp, 3 - 96).

During the spring of 1991, mutual exchange of Discovery (documents and oral depositions) was initiated when Sverdrup sent requests to the Plaintiff (C-Supp 1-2). Corporation employees were sent notices of deposition (C-Supp, 97-105) and a request for production of documents was given to the Defendants (C-Supp, 106-109). Abbey provided documents and appeared for a deposition in June 1991 but the Sverdrup employees cancelled. Furthermore, many oral disputes now arose concerning the Discovery Documents related

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EEOC charge against a previous employer.

[12] C-Supp 49-50, 75-76.

[13] C-Supp 46-48, 95.

[14] C-Supp 919, C-Exh #45

[15] C-Exh #38, Exhibit No. 9 - 12; C-Exh #45

[16] C-Exh #41, pg. 104ff; Exhibit No. 3

to the Huntsville facility and the Marshall contract. In May 1992,[17] Sverdrup et al. submitted a motion and memorandum for partial summary judgment, stating these major points:

ARGUMENT for SUMMARY JUDGMENT

1. A Charge must be filed with the EEOC before bringing a Title VII lawsuit. The charge must be filed within 180 days of the alleged discriminatory action.

2. Hiring is a distinctly different action than retaliation.

3. The scope of the subsequent civil action is limited to subject matter which can reasonably be expected to be investigated as a consequence of filing the initial charge. An employee may file a charge of retaliation only in the situation where an employer takes some adverse action against the employee after an initial charge has been filed.

4. The Defendants state that the Plaintiff filed a retaliatory discharge complaint against them and any claim using the word "retaliation" must grow from filing a previous charge against Sverdrup.

5. Documents completed by the plaintiff for the EEOC do not explicitly label actions as "retaliation". The Defendants did not know that "retaliation" was being investigated.

6. Abbey submitted a blank employment application and an excerpt from the government SF-171 form to the EEOC, which are irrelevant. Sverdrup has no copy of the completed application form where the Plaintiff wrote that she previously filed an EEOC charge.[18,19]

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[17] Memorandum for Defendants, C Supp, 116 - 170, May 21, 1992

[18] Brief for Appellant (Abbey), 22-23, Nov.8, 1995.

[19] This is a contested matter of fact. Sverdrup has always possessed a copy of the application which Abbey submitted for employment. She, however, did not make a copy of her completed

Abbey's counsel submitted a motion and memorandum to compel discovery (C-Supp 171) and a pre-trial meeting was held on May 26, 1992. At that meeting, Sverdrup claimed to the Court that the Discovery requests could not be completed because the company needed to convince NASA for permission to release documents. (C 57-58) (A 71)

Then a statement of opposition and memorandum were filed for the plaintiff (C-Supp, 173-184). As part of the Rule 56(f) affidavit, justifications were provided for each individual item in the document request. (C-Exh #48). Many of these related to proving that the arguments advanced in the Quinn memo were largely pretextual to cloak discrimination and/or the facts of the case related to the other civil action claims. The arguments opposing partial summary judgment can be summarized as:

ARGUMENT OPPOSING SUMMARY JUDGMENT

1. Abbey's deposition, exhibits, and factual summary submitted to EEOC provide a basis for the scope of the investigation and civil complaint. As such, these documents contain references to material facts and disputes with the Defendants' version so that partial summary judgment is inappropriate.

2. In general, partial summary judgment is not granted in Title VII cases, particularly where Discovery Requests have not been completed.

3. When the contents of the Intake Questionnaire differ from the Charge form, many courts have found that the Intake Questionnaire is equivalent to the Charge form for the purpose of establishing the scope of the investigaton.

4. When the employees (non-lawyers) of the EEOC err technically with respect to the language on the Intake Ques-

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application before returning it to Sverdrup in Sept. 1989.

tionnaire or Charge form, the issues are frequently resolved in favor the of the plaintiff who is untutored in legal technicalities.[20]

5. The Supreme Court case, *Love v. Pullman*, 404 US 522 (1972) states that for charges filed with the EEOC, "technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers initiate the process."

Judge Younger signed the Order granting Partial Summary Judgment and the discussion regarding document and deposition requests from Sverdrup continued. The Plaintiff agreed to voluntarily eliminate a few categories and Judge Younger partially granted the motion to compel in January, 1993 (C171) with respect to documents the Plaintiff considered essential. Depositions of Sverdrup personnel were scheduled and executed in April, 1993, immediately upon receipt of compelled documents.[21] A trial on the remaining state claims was held on June 28, 1993. After one week, the trial ended in a mistrial by jury and was transferred to the administrative docket. (C 1-3, C-Supp 758).

A number of attorney situations (documented in briefs and in the Record on Appeal) then developed. At the end of 1994 and beginning of 1995, Abbey submitted additional Discovery requests to correct deficiencies in the corporations' compliance with previous requests.[22] After receiving these documents, Abbey submitted a motion and memorandum to re-instate and amend the Title VII claim.[23] In this memorandum, Abbey noted the following:

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[20] Brief for Appellant Abbey, 25 - 26, Nov. 8, 1995.

[21] C-Supp 395-402, C-Exh #37 - 40.

[22] C-Supp, 770 - 864

[23] C 42-43, C-Supp 865-934

ARGUMENT for REINSTATEMENT and AMENDMENT of TITLE VII

1) All aspects of this case revolved around the failure of Sverdrup to hire her after Sverdrup was awarded the contract at NASA Marshall Space Flight Center. In that respect, conversations and events which occurred on different dates were not distinct and separate. Over one year elasped from the date when Abbey was extended a "firm offer" and the date when she learned that most of the hiring at the Huntsville Sverdrup facility had been completed and she received a letter from the Tennessee headquarters seeming to indefinitely defer any job opportunities.

2) Sverdrup's argument concerning "retaliation" addressed only "retaliatory discharge" and not "retaliatory failure-to-hire" which can result from any number of reasons including the fact that an EEOC charge for "retaliatory termination" had once been filed against a prior employer or the fact that the charging party had not been hired due to her objection to discriminatory hiring policies voiced to another employee in a phone call, etc.

3) The case precedent cited by Sverdrup was discussed in detail as it applied to her case. In particular, she pointed out that the judicial opinion *Sanchez v. Standard Brands, Inc.* 431 F.2nd 455 (1970) was intended to allow plaintiffs to proceed in court independent of minor technical flaws, and not intended to discourage the legally naive.

4) Alternate theories are permissible, i.e. failure-to-hire as sex discrimination and failure-to-hire as retaliation for protected activity, etc. Abbey then showed how the content of the Discovery documents and depositions supported these theories.

5) Nearly every statement in Quinn's letter was pretextual and could be disproved with the newly acquired discovery material. For example, an alleged competition between three individuals with firm offer letters had not occurred as

described in the Quinn memo. The white male had never received a "firm offer" as had the two females. Abbey's visit to Sverdrup occurred a month earlier than claimed. Regarding the two Sverdrup managers who completed "interview" assessment sheets on Abbey a month later: Neither was present on the August date when Abbey visited. In fact, one had been hired two weeks afterward and had never experienced any contact with the plaintiff. Furthermore, the woman who "won" the "job" competition expressed a different view in her deposition. She had been harassed into accepting a demoted position.

6) Although the Quinn memo referred to receiving "completed and approved" Task Directives from NASA as a prerequisite to hiring individuals, it was now known that the Sverdrup managers wrote the Task Directives for the employees in response to much broader and more generalized descriptions of the Statement of Work called Work Authorization Requests. If no Task Directives fit Abbey's background, Sverdrup was largely responsible.

7) Civil complaints and pleadings could be amended at any time to conform to facts.

8) The right to a trial "de-novo" on the Title VII claims is supported by case precedent.[24]

A hearing was held in April, 1995 on Abbey's motion (C-Supp 1147, C-Exh #49) . This was adjourned so that Abbey could research and submit a supplemental memorandum concerning Rule 54(b), finality of judgments, and the basis for her request for revision. (C Supp 936-948). The Defendants, Sverdrup et al. then moved for Rule 54(b) Certification of the previous partial summary judgment (C44 -

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[24] *McDonnell Douglas v. Green*, 411 US 792 (1973); *Beverly v. Lonestar Lead*, 437 F.2nd 1136 (1971); *Robinson v. Lorillard*, 444 F. 2nd 791 (1971); *Fekete v. US Steel*, 424 F. 2nd 331 (1970); *Flowers v. Labor Intl Union*, 431 F. 2nd 205 (1970).

46), and the Court granted the Sverdrup motion (C 66).

Notice for appeal to the Alabama Supreme Court was filed on August 4, 1995 by the plaintiff. Both parties submitted briefs after a lengthy dispute concerning the content of the Record on Appeal. Then, the case was referred to the Alabama Court of Civil Appeals. Abbey's briefs addressed the issues of Rule 56(f) affidavits, the right to revise interlocutory judgments under Rule 54(b), the scope of the investigation, court cases which supported her requests, mitigating circumstances, the right to a de novo trial on the issues, etc., the right to amend pleadings. All actions in the civil case were listed and referenced to the Record on Appeal. Request for oral hearing was denied. After the judicial decision was released (A 9), Sverdrup submitted a timely Application for Rehearing of the decision of the Court of Civil Appeals and Petitioned for Writ of Certiorari to the Alabama Supreme Court. Requests submitted by both parties for oral hearing were denied.

Conclusion to Statement of Facts and Case

In the initial Affirmative Defense, Sverdrup objected to Count VII in the Amended Complaint on the basis that claims not contained in the charge filed with the EEOC had been raised. However, the Record shows that the items in Count VII closely parallel the contents of the EEOC investigative file.

Following affirmation of the trial court's partial summary judgment removing Count VII, the case has now been remanded for further action (pre-trial orders and a second trial on the remaining claims). Nothing has been scheduled pending outcome of the Petition for Writ of Certiorari.

ARGUMENT

A plaintiff in a Title VII civil action faces two tiers of

scrutiny. First, a charge is filed with the Equal Employment Opportunity Commission. At the end of the administrative investigation, a letter of determination is issued. If the EEOC concludes that there is reasonable cause, conciliation and perhaps a lawsuit follow. If the EEOC does not find reasonable cause, the charging party can move to the second stage, a private lawsuit, with de novo judicial review. Courts have held in several cases that the language on the civil complaint need not conform to the language on the EEOC charge exactly. The EEOC can formulate a civil complaint citing claims arising from information found during the investigation, although an EEOC charge was never filed stating those particular claims. An example of this is found in *EEOC v. Brookhaven Bank & Trust Co.* 614 F. 2d 1022 (1980)[25] where the fifth circuit court of appeals ruled in favor of an EEOC initiated civil action on a reasonable cause finding that the bank maintained segregated job classifications. The original charge filed by an African-American woman alleged that the woman had not been hired due to her race. She had received a no cause finding. No charge related to segregated job classifications had ever been filed.

In *Johnson v. Railway Express Agency*, 421 U.S. 454 (1975) this Court decided that a civil complaint based on a Title VII charge cannot later be amended to include a complaint based on other statutes. This type of decision has been rationalized by noting that the judicial remedies, types of employees affected, filing deadlines, and other procedures differ between complaints filed under different statutes.

However, Abbey's civil action involves only 42 USC § 2000(e)-et seq and the questions in this case concern the degree to which the language in the civil complaint must conform to the language of the Title VII EEOC charge, whether the filing of the Title VII charge itself is more

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[25] See also, *EEOC v. American National Bank*, 652 F. 2d 1176 (1981) where civil action expanded to additional company offices.

important than the designated category of discrimination for all civil actions resulting from one statute, and whether it is the Determination letter or the contents of the EEOC file that define the scope of the investigation.

Noting that the procedural technicality here concerns the variance between the language of the civil complaint and that found in the steps of an investigation involving only one statute, Petitioner Abbey maintains that

I. The decision by the Alabama Supreme Court conflicts with a previous decision by a United State Court of Appeals (5th Circuit). In the benchmark case of *Sanchez vs. Standard Brands, Inc. 431 F. 2d 455 (1970)* Celia Sanchez filed a complaint with the EEOC in January of 1967. The complaint included both a statement of facts and a check mark in a box labeled "sex". After the period of time for filing an EEOC charge had elapsed, she added details to her factual statement and filed an amended charge where she checked "national origin". The Court held that the "scope" of the judicial complaint is limited to the "scope" of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination. Clearly, the language of this decision emphasizes the right of a plaintiff to proceed in court, without the obstacles of legal technicalities:

> in this equal employment opportunity action we consider the linguistic tolerance to be accorded a charging party under the 1964 Civil Rights Act and its attendant regulations. The court below dismissed the complaint on the ground that plaintiff had written the wrong words and checked the wrong box in filling out an administrative charge form supplied by the Equal Employment Opportunity Commission. Because we conclude that the trial court's approach is not in keeping with the words of the statute, with the intent of Congress, or with the

regulations adopted by the EEOC, we reverse and remand. This case is cited in footnote 3 of the minority opinion of *Johnson v. Railway Express Agency*, 421 U.S. 454 (1975) and in section 4 of the minority opinion in *Baldwin County Welcome Center v. Brown*, 466 U.S. 147 (1984).

Other cases affirming the right to liberally worded pleadings: *Conley v. Gibson*, 355 U.S. 41, 47 (1957); *Haines v. Kerner*, 404 U.S. 519 (1972); *Browder v. Director, Illinois Department of Corrections*, 434 U.S. 257 (1978); *Schlesinger v. Councilman*, 420 U.S. 738,(1975); *Vaught v. R. R. Donnelley & Sons Co.*, 45 F.2d 407 (1984); *E.E.O.C. v. Michael Construction Co.*, 706 F.2d, 244 (1983); *Griffin v. Carlin*, 755 F.2d 1516 (1985); *McKee v. McDonnell Douglas Technical Services Co.*, 700 F.2d 260 (1983); *Hicks v. Abt Associates, Inc.*, 572 F.2d 960 (1978) (genuine issue of material fact existed whether EEOC improperly refused to accept an amendment); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974).

II. The decision by the Alabama Supreme Court conflicts with a previous decision by a United States Court of Appeals (5th Circuit). In *Gamble vs. Birmingham R.R.*, 514 F. 2nd 678 *(1975)* plaintiffs filed an EEOC charge on the basis of race-based discrimination with respect to promotion from the positions of switchmen to conductors. The EEOC investigated, issued a probable cause determination and filed a lawsuit in which discrimination with respect to promotion to supervisor (a position filled almost solely from the conductor roster) was also included on the complaint. The Fifth Circuit Court of Appeals ruled in favor of this expanded judicial complaint. Judicial economy was a cited factor. [26] In *Eastland*

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[26] Similar to *Gibbs v. Pierce County Law Enforcement Support Agency*, 785 F.2d 1396 (1986) where the plaintiffs alleged on the complaint form that they were paid less than communications

vs. Tennessee Valley Authority, 398 F. Supp 541, 553 F. 2nd 364, 1977, the Court ruled similarly stating that "Discovery Rules should be liberally construed, particularly in Title VII cases where procedural technicalities should not impede vindication of guaranteed rights."[27]

III. The decision by the Alabama Supreme Court conflicts with a previous decision by a United State Court of Appeals (5th Circuit). In *Ray vs. Freeman*, 626 F. 2d 439 (1980) the Court disallowed claims based on new acts of discrimination following a date of discharge, but made it clear that claims arising from the same set of facts but used to amplify, clarify, or focus the complaint would be appropriate.

IV. The decision by the Alabama Supreme Court conflicts with the doctrine articulated in *Serpe v. Four-Phase Systems, Inc.*, 718 F.2d 935, 1983, the charging party alleged several aspects of gender discrimination in her complaint when she compared her duties with males with different position titles. Later, the civil complaint cited that her requests for transfer were refused in a discriminatory manner. The court held that the requests for transfers to sales positions were included in

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supervisors because of their sex. The federal court of appeals ruled that scope of the investigation included an examination of other positions of different title but of similar responsibility created within the same department.

[27] Later, this opinion was revised in *Eastland vs. Tennessee Valley Authority*, 714 F. 2d 1066 (1983), but not due to a disagreement with the concept that instances "like or related to the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination" can be included. In this case, it was decided that the initial assignments of personnel had been made years before Title VII was made applicable to the TVA and the initial assignments were never mentioned during the EEOC investigation.

the scope of the EEOC investigation, although not specifically mentioned in the complaint.

V. The decision by the Alabama Supreme Court conflicts with the doctrine articulated in *Forehand v. Florida State Hospital,* (11th Cir, 1996) concerning a cooperative and diligent plaintiff. Referencing *Louis Pinkard et al. v. Pullman-Standard*, 678 F. 2d 1211 (1983), the Court defined actions which "fail to exhaust administrative processes" as actions exhibiting an attitude of "no interest in permitting the EEOC to first attempt a settlement of clients' grievances". The Court pointed out that the prevailing clients in Pinkard "did not frustrate the EEOC's effort to investigate or conciliate the charges". Clearly, the intent is not to penalize the diligent non-lawyer claimant who does not have access to WestLaw and has not been advised with regard to topics such as 'scope of the investigation' in Title VII claims.

VI. The decision by the Alabama Supreme Court conflicts with the basis for a first circuit decision in *Lattimore vs. Polaroid Corporation*[28] in which the Court explained that when the amended complaint contains both a new set of facts and a new claim, the amendment cannot be sustained. In Abbey's case, the scope of the case has been defined from the beginning by the notes she submitted to the EEOC (A 60) and the corporate response to the EEOC's questions (A 66). Under no circumstances, can the company claim they have been surprised by new allegations.

VII. The Alabama Supreme Court erred by not recognizing the difference between alternate theories of discrimination characterizing a particular set of facts and new facts and allegations of discrimination brought up at a later date.

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[28] 1996.C01.569 (http://www.versuslaw.com)

WHY the QUESTIONS PRESENTED for REVIEW are IMPORTANT

1. Judicial Economy - Civil litigation is frequently slowed and halted due to disagreements with respect to technicalities. In many cases, the defendant employer clearly is not surprised or placed in a disadvantageous position by allowing amendment of the civil complaint and/or reasonable common sense variance between the language in the civil complaint and the language in the EEOC charge form and the determination letter. The present situation rewards employers who are uncooperative and contentious at every step of the litigation.

2. Manifest Injustice - Implementation of the EEOC regulations regarding case investigations vary with case load and policy of the individual regional office. The EEOC does not always verify the employer's account of events leading to the EEOC charge.[29] In such cases, the plaintiff may be requesting discovery documents to disprove pretextual accounts after filing the initial civil complaint. Only after the discovery process has been completed will the plaintiff know whether alternate theories of discrimination more adequately apply to the case at hand . Until that time, the language of the claims should not be required to be overly specific. Such justifications have been expressed already in judicial opinions such as in*Oaks vs. City of Fairhope, Ala*; 515 F. Supp 1004 (1981), where the Court found that

....Summary Judgment is perhaps 'particularly inappro-

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[29] *EEOC Birmingham Office Closed Discrimination Charges Without Full Investigation,* Report to Conressional Requesters, GAO, #93-7258 (1993).

priate' in employment discrimination cases, because such cases necessarily involve examining motive and intent; thus summary judgment should be used cautionsly in such cases and all procedural requirements should be given strict adherence.

Other plaintiffs assume great risk of employment blacklisting by filing a charge with the EEOC only to lose on technicalities in federal courts of appeal. In *EEOC v. Hickey-Mitchell Co.* 507 F.2d 944 (1974), a sex discrimination claim was dismissed from the civil action because the EEOC charge had alleged racial discrimination. And, similar to the Plaintiff's case, in *Antol v. Perry*,[30] the Plaintiff was unable to add a gender based complaint to retaliation. In fact, only a small percentage of employment cases survive to satisfactory conclusion in court due to technicalities.[31]

A quick survey of VersusLaw using the words "EEOC AND (scope w/3 investigation" retrieved about one hundred thirty cases. A significant fraction of cases dismissed for technicalities involved plaintiffs who had not filed charges within the prescribed amount of time or who had not filed a civil lawsuit ninety days after the Right-to-Sue letter had been delivered. These time limits are published in EEOC publications, available at worksites, in the public library etc. However, another fraction of cases are dismissed with laborious, esoteric debate about the category of discrimination. A requirement to overspecify is not found in the statute. A victim of discrimination will not easily find a discussion of the difference between retaliatory failure-to-hire and retaliatory discharge in the public library, only in court reporters and

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30 (1996.C03.85.http://wwww.versuslaw.com)

31 C.J. Lanctot, *The Defendant Lies and the Plaintiff Loses: The Fallacy of the "Pretext-Plus" Rule in Employment Discrimination Cases,* Hastings Law Journal, 43, 57 - 141, 1991.

Westlaw.

3) Inconsistency between decisions - Although the EEOC[32] has won the right to add claims onto civil actions after the administrative investigation of a simpler charge has been completed, it is still very difficult for plaintiffs to add new claims. In *Stamatina Stallcop v. Kaiser Foundation*, 820 F.2d 1044 (1987), the plaintiff filed a discrimination charge against Kaiser with the California Department of Fair Employment and Housing alleging she was terminated due to her Greek national origin. The civil complaint included sex and age discrimination. The Court ruled that Stallcop had not exhausted her state administrative remedies because the state agency obviously would have only investigated national origin discrimination. No mention of the contents of theinvestigative file were mentioned. When the EEOC issues a no cause finding with respect to the alleged discrimination appearing on the charge form, plaintiffs can proceed in court for de novo judicial review. But what if the investigation does reveal facts that the plaintiff believes justify a a new claim? or simply an alternate theory of the same set of facts? Is it consistent to require a reasonable cause finding by the EEOC in order to allow the Plaintiff who is now better informed concerning the circumstances of the alleged discrimination to frame the wording of the civil complaint to better conform to the situation?

Permitting amendment of Abbey's claim to reflect multiple or hybrid claims of discrimination would be consistent with cases such as *Lam vs. University of Hawaii*, 40 F.3d 1551 (1994) (Plaintiff brought Title VII action to Court on the basis of race, national origin, gender, and

---

32 *EEOC v. General Electric* 1976, where the initial charge only alleged race discrimination but the EEOC's civil action alleged both race and sex discrimination.

retaliatory failure-to-hire. The US Court of Appeals analyzed at length, the difficulties inherent when attempting to delink or separate different aspects of violation of Title VII).

4) In *Steffen v. Meridian Life Ins.Co.*[33], 859 F. 2nd 534, Steffen initially completed an Intake Questionnaire identifying age discrimination and retaliatory discharge. Because he was told that the Intake Questionnaire was equivalent to a charge, he was later allowed to use the date of filing of the Intake Questionnaire as the date of filing a charge for purposes of meeting the time deadlines. He was not allowed to amend a charge filed as retaliatory discharge and Title VII to included age discrimination under a separate act, the ADEA. However, the important point is that the EEOC sided with his reliance on the Intake Questionnaire to initiate the process as he had been led to believe.

CONCLUSION

Petition for Writ of Certiorari should be granted so that parties can present arguments on these important issues.

Kathleen M Keyhan Abbey
pro se
2104 Mannix Circle
Raleigh, NC 27603
919-821-5329
May 29, 1997

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33 See also, *Philbin v. General Electric Auto Lease, Inc.* 929 F. 2nd 321 (1991).

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 1996-97

1951510

Ex parte Sverdrup Corporation and
Sverdrup Technology, Inc.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS

(In re: Kathleen M. Abbey

v.

Sverdrup Corporation and Sverdrup Technology, Inc.)

(Madison Circuit Court, CV-91-373;
Court of Civil Appeals, 2941150)

HOUSTON, JUSTICE.

Kathleen M. Abbey sued Sverdrup Corporation and Sverdrup Technology, Inc. (hereinafter collectively referred to as "Sverdrup"). Her claims included a claim alleging a retaliatory refusal to hire. The trial court entered a partial summary judgment for Sverdrup on that claim. Abbey appealed. The Court of Civil Appeals reversed and remanded for further proceedings on that claim. *Abbey v. Sverdrup Corp.*, [Ms. 2941150, April 5, 1996] So.2d (Ala.Civ.App. 1996). We granted certiorari review.

Abbey's complaint against Sverdrup sought damages based on claims of breach of contract, promissory estoppel, unjust enrichment, misrepresentation, and concealment. After filing her complaint, Abbey received from the Equal Employment Opportunity Commission ("EEOC") a "Notice of Right to Sue," based on a charge of discrimination she had filed against

Sverdrup alleging that Sverdrup had discriminated against her on the basis of her sex.[1] On November 30, 1990, the EEOC issued its "Determination" based on its investigation of Abbey's charge, stating in part as follows:

> "All requirements for coverage have been met. Charging Party [Abbey] alleges that she was discriminated against in violation of Title VII in that she was refused employment with Respondent [Sverdrup] because of her sex (Female).
>
> "Examination of the evidence indicates Charging Party was not hired because she was not qualified for the five (5) positions which Respondent was funded for. Although Charging Party was given a written offer of employment, this offer was contingent upon four factors which were clearly stated in the offer. Other persons, male and female, received contingent offers of employment and were not hired for the same reasons as Charging Party. Respondent employs around 200 persons of which 23% are female and 9.5% female engineers.
>
> "Based on the analysis, [the EEOC has] determined that the evidence obtained during the investigation does not establish a violation of the statute."

Abbey requested, in writing, that the EEOC review its determination. After doing so, the EEOC affirmed the results of its initial investigation and gave Abbey a "Notice of Right to Sue." Subsequently, Abbey amended her complaint to add a count alleging a cause of action under Title VII of the Civil

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[1] On the same day she filed her charge of discrimination with the EEOC, Abbey contacted the EEOC and completed an "Intake Questionnaire" informing the EEOC of the basis of her charge. Her reasons stated on the questionnaire included sex, age, and the fact that she had previously filed a discrimination charge with the EEOC.

Rights Act -- retaliation for engaging in protected conduct (i.e., for having filed an employment discrimination charge against a prior employer). Thereafter, Sverdrup moved for a partial summary judgment as to the Civil Rights Act claim (sometimes herein referred to as an "EEOC claim"), alleging that Abbey's complaint alleged a retaliatory failure to hire, not discrimination on the basis of her sex, and that as to that claim she had failed to exhaust her administrative remedy by timely filing a charge of retaliation with the EEOC -- that is, that she had failed to file with the EEOC a claim alleging retaliatory discharge, within 180 days of the alleged discrimination. Subsequently, Abbey moved to compel the full production of documents she had requested and complete answers to interrogatories she had served on Sverdrup. The trial court entered a partial summary judgment for Sverdrup as to the EEOC claim, without ruling on Abbey's motion to compel; it later made that judgment final pursuant to Rule 54(b), Ala.R.Civ.P.[2]

Abbey appealed, arguing that the partial summary judgment was erroneously entered because, she says, the requested discovery was essential to allow her to properly respond to Sverdrup's summary judgment motion. The Court of Civil Appeals reversed the judgment for Sverdrup and remanded the case for further proceedings. It based the reversal on what it considered to be the crucial effect of the pending discovery on Abbey's case:

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[2] Two years after the trial court entered the partial summary judgment for Sverdrup, Abbey moved that the trial court "reconsider" the partial summary judgment and allow her to amend her discrimination claim to conform to the facts found in the EEOC file and in a pretrial deposition she had given. The trial court denied the motion. Thereafter, she filed a second motion for relief from the partial summary judgment and a memorandum in support thereof. Sverdrup opposed the motion and moved the trial court to make the partial summary judgment final.

"Sverdrup argues that much of the discovery Abbey sought was in [Abbey's] possession at the time it filed its motion for summary judgment. Abbey contends, however, that only a fraction of the discovery had been provided to her at that time, and the motions to compel and her attorney's statement in his brief in opposition to the summary judgment motion support her contention. Sverdrup also argues that its motion was limited to the alleged procedural flaw in Abbey's EEOC charges, that discovery relative to that issue had been provided, and that no material issue of fact remained regarding the EEOC proceedings. Therefore, Sverdrup says, the discovery sought by Abbey was not crucial to her case. In her brief in opposition to Sverdrup's motion, however, Abbey discussed what she considered to be material factual disputes and argued that receipt of her additional requested discovery was essential in order to allow her to properly respond to Sverdrup's motion.

"....

"... Abbey argued to the trial court, as she does to this court, that one reason the discovery process was incomplete at the time of the motion for partial summary judgment was because Sverdrup's opposition to many of her discovery requests had delayed the discovery process. The record clearly indicates that the parties were engaged in several discovery disputes. Under these circumstances, it was error for the trial court to enter the partial summary judgment with discovery pending, after Sverdrup's failure to provide the requested discovery had been brought to the trial court's attention."

__So.2d at___ .

Sverdrup argues that the "Court of Civil Appeals erred, in

light of existing statutory and case law, in reversing the ... partial summary judgment, which was based on a very narrow procedural ground, and not on the merits of [Abbey's] substantive claim" (because Abbey did not satisfy the statutory prerequisite of filing the charge of retaliatory discharge with the EEOC before filing the complaint) and erred in reversing

> "on the basis that discovery was not complete, when any discovery which was still pending did not relate in any way to the basis and/or grounds on which the trial court granted [Abbey's] partial summary judgment motion."

The filing of a charge of discrimination with the EEOC is a condition precedent to the bringing of a Title VII civil action, 42 U.S.C. § 2000e-5(e). The purpose of that requirement is to permit the EEOC to act as a mediator between the employer and the employee so as to encourage the parties to settle disputes without a trial. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974). Such a charge must be filed with the EEOC within 180 days of the alleged discriminatory action. 42 U.S.C. § 2000e-5(e). After the EEOC has investigated the charge of discrimination, the individual may institute a Title VII action, upon receiving a right-to-sue letter issued by the EEOC, 42 U.S.C. § 2000e-5(f)(1). However, the scope of the plaintiff's complaint

> "is limited to the 'scope' of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination."

Sanchez v. Standard Brands, Inc., 431 F.2d 455, 466 (5th Cir. 1970) (citing with approval *King v. Georgia Power Co.*, 295 F.Supp. 943 (N.D. Ga. 1968)):

> "The logic of this rule is inherent in the statutory scheme of Title VII. A charge of discrimination is not filed as a prelim-inary to a lawsuit. On the contrary, the purpose of a charge of discrimination is to trigger the investigatory and conciliatory procedures of the EEOC. Once the charge has been filed, the Commission carries out its investigatory

function and attempts to obtain voluntary compliance with the law. Only if the EEOC fails to achieve voluntary compliance will the matter ever be the subject of court action. Thus it is obvious that the civil action is much more intimately related to the EEOC investigation than to the words of the charge which originally triggered the investigation. Within this statutory scheme, it is only logical to limit the permissible scope of the civil action to the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination."

Abbey's EEOC charge read as follows:

"On or about 10-1-89, I received a final letter stating there was no position as senior engineer with [Sverdrup].

"The reason given to me was that there was no fit with my background and qualifications.

"I believe that I have been the victim of unlawful discrimination in employment because of my sex, female, in violation of Title VII of the Civil Rights Act of 1964, as amended because:

"A. Since September 1988 I received one written offer and several verbal verifications that I would be hired upon receipt of the Marshall contract. I was not hired."

Abbey's EEOC count in her complaint read as follows:

"51. At the time [Abbey] accepted [Sverdrup's] September 28, 1988, offer of employment, [Abbey] completed and returned to [Sverdrup] an application for employment.

"52. In her application for employment [Abbey] disclosed that she had filed a charge of discrimination with the Equal

Employment Opportunity Commission ('EEOC') against a prior employer.

"53. [Abbey] discussed the status of her application with a representative of [Sverdrup] in April 1989.

"54. [Abbey] was labeled by [Sverdrup] as 'nothing but trouble.'

"55. [Sverdrup] refused to hire [Abbey] because she opposed an unlawful employment practice or because she filed a charge alleging an unlawful employment practice in violation of 704 of Title VII, 42 U.S.C. § 2000e-3.

"56. On or about December 12, 1989, [Abbey] filed a charge of discrimination against [Sverdrup] with the EEOC.

"....

"58. As a direct and proximate result of [Sverdrup's] unlawful employment practice, [Abbey] has suffered loss of employment, loss of salary, lost earning capacity, and has incurred attorney's fees."

The actions Abbey complained of in her complaint were not the kind of actions that "are like or related" to the scope of an EEOC investigation of her sex discrimination charge. *Sanchez*, 431 F.2d at 466. Clearly, the factual basis of Abbey's complaint is retaliation for having engaged in conduct protected under § 704 of Title VII, while the basis of her discrimination charge with the EEOC relates to failure to hire because of "her sex (Female)," not retaliation.

Consequently Abbey failed to meet the statutory prerequisite of filing a charge of retaliatory discrimination with the EEOC before filing a Title VII civil action.

Furthermore, from our review of the record, it appears that when Sverdrup's motion for partial summary judgment was filed, the discovery matters that were pending pertained to the merits of Abbey's retaliation claim, not to the procedural grounds on which the trial court entered Sverdrup's partial summary judgment (specifically, that Abbey had failed to exhaust her administrative remedies under Title VII by timely filing a charge of retaliation). Therefore, Abbey failed to establish that the outstanding requested discovery items were or might have been crucial to her case. Her complaint and her EEOC charge (the only documents relevant to whether the partial summary judgment was properly entered), as well as the EEOC intake questionnaire and the EEOC investigative file, were in her possession from the beginning of the case.

The trial court properly entered the partial summary judgment for Sverdrup. Therefore, we reverse the judgment of the Court of Civil Appeals and remand the case to that court for an order or proceedings consistent with this opinion.

REVERSED AND REMANDED.

Hooper, C. J., and Maddox, Shores, Kennedy, Cook, and Butts, JJ., concur.
Released, Nov. 22, 1996
Clerk, Supreme Court of Alabama

ALABAMA
COURT OF CIVIL APPEALS

OCTOBER TERM, 1995-96

2941150

Kathleen M. Abbey
v.
Sverdrup Corporation and Sverdrup Technology, Inc.
Appeal from Madison Circuit Court
(CV-91-373)

BEATTY, Retired Justice

The plaintiff, Kathleen M. Abbey, appeals from a partial summary judgment entered in favor of Sverdrup Corporation and Sverdrup Technology, Inc. (collectively referred to as "Sverdrup"). Our supreme court transferred the appeal to this court pursuant to § 12-2-7(6), Ala. Code 1975. We reverse and remand.

In January 1988, Abbey interviewed with Sverdrup for an engineering position. In September 1988, Sverdrup offered Abbey employment as a senior engineer, contingent upon Sverdrup's obtaining a NASA contract for engineering services at the Marshall Space Flight Center in Huntsville. Abbey accepted the offer. In February 1989, Sverdrup notified Abbey that it had been selected for final consideration for the NASA contract, and in May 1989, it notified her that it had received the NASA contract and would soon be in a position to advise her about the status of her application for employment. By the fall of 1989, however, Sverdrup still had not hired Abbey. Sverdrup eventually offered her a position junior to that for which she had been interviewed, but never followed through on its offer of the senior engineer position she had accepted.

Abbey contacted the Equal Employment Opportunity Commission ("EEOC") in December 1989 to complain about Sverdrup's failure to hire her. On her intake questionnaire, she informed the EEOC that she thought Sverdrup had discriminated against her on the basis of her sex and age and because Sverdrup learned she had filed an EEOC complaint against a previous employer. Abbey then signed and filed a charge of discrimination with the EEOC against Sverdrup, alleging only that Sverdrup had discriminated against her on the basis of her sex. She says that an EEOC staff member told her she could not file a charge of discrimination on multiple grounds, even though she had provided information to the EEOC regarding her retaliation claim. On November 30, 1990, the EEOC issued its determination that Sverdrup had not discriminated against Abbey because of her sex. Abbey requested an EEOC review of that decision.

In February 1991, Abbey sued Sverdrup, alleging breach of contract (express and implied), promissory estoppel, unjust enrichment, misrepresentation, and concealment. Also in February 1991, the EEOC affirmed the results of its initial investigation and issued Abbey a "Notice of Right to Sue." She then amended her complaint to add a cause of action alleging discrimination in violation of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. ("Title VII").

In 1991, the parties propounded discovery requests to each other. During the summer of 1991, Abbey says, she responded to Sverdrup's discovery requests, but she says that her attorneys were unsuccessful in obtaining complete discovery from Sverdrup. In May 1992, Sverdrup moved for a partial summary judgment as to Count VII of Abbey's amended complaint, on the ground that Abbey had failed to exhaust her administrative remedy under Title VII by failing to file a timely charge of discrimination with the EEOC. Sverdrup argued that Abbey's complaint alleged a retaliatory failure to hire, not discrimination on the basis of her sex, and that her EEOC charge did not include her retaliation claims.

Shortly thereafter, Abbey's attorneys moved to compel the full production of requested documents and complete answers to interrogatories from Sverdrup. Abbey's counsel also filed an opposition to Sverdrup's summary judgment motion with a supporting memorandum. At that time, much of the discovery requested by Abbey apparently remained outstanding. In his memorandum, Abbey's counsel specifically discussed his client's inability to complete discovery:

> "The Supreme Court has noted that requiring the nonmovant to present evidence of a genuine issue 'is qualified by Rule 56(f)'s provision that summary judgment be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition.' *Anderson v. Liberty Lobby*, 477 U.S. 242, 106 S. Ct. 2505, 2511 n.5 (1986). As the Court knows, discovery in this case has halted due to disagreements regarding document production by Defendants. Pending Plaintiff's motion to compel (which the Court has deferred while Defendants reevaluate their position, as the Court requested), Plaintiffs have not yet deposed Defendants or other key witnesses. Therefore, Plaintiff is deprived at this time of a fair opportunity to rebut the Defendants' factual arguments."

The record also contains a letter from one of Abbey's lawyers to another that discusses a status conference held by the trial court in May 1992 during which pending discovery issues and Sverdrup s motion for partial summary judgment were discussed. On July 21, 1992, the trial court entered a partial summary judgment for Sverdrup on Abbey's Title VII claims. At that time, the court had not yet ruled on Abbey's motion to compel. The case proceeded to trial before a jury in June 1993, but the jury was unable to reach a verdict.

In November 1994, Abbey, who was by then representing herself, filed a motion asking the trial court to set aside the partial summary judgment entered in 1992 and asking that she be allowed to amend her Title VII claim to conform to facts

contained in her EEOC file and pretrial depositions. The trial court denied her motion. In March 1995, Abbey filed another motion requesting relief from the partial summary judgment. Sverdrup opposed her motion, and requested that, instead of ruling on the motion, the trial court make the partial summary judgment a final, appealable order pursuant to Rule 54(b), Ala. R. Civ. P. The trial court complied and entered a Rule 54(b) certification. Abbey appeals from that partial summary judgment, made final pursuant to Rule 54(b) three years after its entry.

The mere pendency of discovery does not bar the entry of a summary judgment. Nevertheless, if a trial court from the evidence before it, or an appellate court from the record, can determine that the discovery sought was crucial to the nonmoving party's case, then it is error for the trial court to enter a summary judgment before the discovery is provided. *Reeves v. Porter*, 521 So. 2d 963 (Ala. 1988). Rule 56(f), Ala. R. Civ. P., protects a party opposing a motion for summary judgment if that opposing party states reasons why he or she cannot present essential facts. *Starks v. Commercial Union Ins. Co.*, 501 So. 2d 1214 (Ala. 1987). The opposing party has the burden of complying with Rule 56(f) and of proving that the discovery items sought are or may be crucial to his or her case. *Reeves*, 521 So. 2d at 965.

Rule 56(f) provides:

> "Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just."

Strict compliance with Rule 56(f) is not required, however. A pending motion to compel has been held to be sufficient compliance. *Reeves*, 521 So. 2d at 965. See also *Parrish v. Board of Commissioners of Alabama State Bar*, 533 F.2d 942

(5th Cir. 1976); *Noble v. McManus*, 504 So. 2d 248 (Ala. 1987). Our supreme court has also held that an attorney's signature on a brief satisfied the affidavit requirement of Rule 56(f) "because the attorney is an officer of the court." *Oliver v. Townsend*, 534 So. 2d 1038, 1042 (Ala. 1988). In *Oliver*, the attorney did not file an affidavit in strict compliance with Rule 56(f), but he did in his brief set out facts regarding his client's need for additional discovery. The court found that to be sufficient compliance with the rule.

Sverdrup argues that much of the discovery Abbey sought was in her possession at the time it filed its motion for summary judgment. Abbey contends, however, that only a fraction of the discovery had been provided to her at that time, and the motions to compel and her attorney's statement in his brief in opposition to the summary judgment motion support her contention. Sverdrup also argues that its motion was limited to the alleged procedural flaw in Abbey's EEOC charges, that discovery relative to that issue had been provided, and that no material issue of fact remained regarding the EEOC proceedings. Therefore, Sverdrup says, the discovery sought by Abbey was not crucial to her case. In her brief in opposition to Sverdrup's motion, however, Abbey discussed what she considered to be material factual disputes and argued that receipt of her additional requested discovery was essential in order to allow her to properly respond to Sverdrup's motion.

When the trial court entered the partial summary judgment in this case, the vast majority of the discovery sought by Abbey was still outstanding. Sverdrup had not yet responded to many of her initial interrogatories and requests for production, despite motions to compel, and she had not yet deposed any of Sverdrup's representatives or other persons she considered key witnesses. Sverdrup's failure to provide full responses to Abbey's discovery requests was pointed out to the trial court in the motions to compel, one filed shortly after Sverdrup filed its motion for partial summary judgment.

Furthermore, Abbey's counsel brought the pendency of the discovery to the attention of the trial court in his brief in opposition to Sverdrup's motion.

Rule 56(f) "should be liberally applied to allow parties an ample opportunity to marshal necessary facts to support their respective positions." *Starks*, 501 So. 2d at 1216 (quoting *Central Acceptance Corp. v. Colonial Bank of Alabama, N.A.*, 439 So. 2d 144, 147 (Ala. 1983)). Abbey argued to the trial court, as she does to this court, that one reason the discovery process was incomplete at the time of the motion for partial summary judgment was because Sverdrup's opposition to many of her discovery requests had delayed the discovery process. The record clearly indicates that the parties were engaged in several discovery disputes. Under these circumstances, it was error for the trial court to enter the partial summary judgment with discovery pending, after Sverdrup's failure to provide the requested discovery had been brought to the trial court's attention.

The judgment dismissing Abbey's Title VII claims is hereby reversed, and the cause is remanded for further proceedings.

The foregoing opinion was prepared by Sam A. Beatty, Retired Justice, Supreme Court of Alabama, while serving on active duty status as a judge of this court under the provisions of § 12-18- 10(e), Ala. Code 1975.

REVERSED AND REMANDED.

Robertson, P.J., and Yates and Crawley, JJ., concur.

5th day of April, 1996

John H. Wilkerson, Jr.

Clerk, Court of Civil Appeals of Alabama

June 26, 1995

CIRCUIT COURT of MADISON COUNTY, ALABAMA

Abbey vs. Sverdrup Corp. and Sverdrup Technology, Inc.

CV91-373-Y/LHL

AMENDMENT to ORDER GRANTING PARTIAL SUMMARY JUDGMENT

This matter is before the Court on the Plaintiff's Motion to Reconsider the Order of Partial Summary Judgment.

In response thereto, the Defendant hs filed a Motion to Amend the Partial Summary Judgment Order.

Upon consideration of all matters submitted, the Court is of the opinion that said Partial Summary Judgment should be amended, so as to make said Partial Summary Judgment a Final Judgment as to the issues contained therein.

Accordingly, said Order Granting Partial Summary Judgment is amended by adding the following language:

The Court hereby makes an express determination that there is no just reason for delay in the entry of this Judgment, and expressly directs the entry of Final Judgment in favor of the Defendant and against the Plaintiff as to Count VII.

The Plaintiff's request for leave of the Court to Amend Count VII is DENIED.

Done this the 26th day of June, 1995.

Loyd H. Little, Jr.
Circuit Judge

July 20, 1992

CIRCUIT COURT of MADISON COUNTY, ALABAMA

Abbey vs. Sverdrup Corp. and Sverdrup Technology, Inc.

CV91-373-Y

ORDER GRANTING PARTIAL SUMMARY JUDGMENT AS TO COUNT VII

This cause came on to be considered on motion of the Defendants, Sverdrup Corporation and Sverdrup Technology, Inc., for partial summary judgment as to Count VII of the Plaintiff's Amended Complaint. This Court has considered the submissions and memoranda of the parties in support and in opposition to the motion for summary judgment. The Court is mindful of the responsibility of the movant to carry the burden of establishing that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Ala.R.Civ.P. 56(c); Rees v. Peoples Bank of Greensboro, 571 So. 2d 1035,1036 (Ala. 1990).

As the retaliation claim in Count VII of the Amended Complaint, Plaintiff has failed to exhaust her administrative remedy by filing a charge with the Equal Employment Opportunity Commission (EEOC), which is a jurisdictional prerequisite.

Partial summary judgment is hereby entered in favor of the Defendants as to Count VII of Plaintiff's Amended Complaint.

DONE and ORDERED this the 20th day of July, 1992.

Thomas N. Younger
Circuit Court Judge

U.S.Equal Employment Opportunity Commission
Washington, D.C. 20507

February 28, 1991
Charge Number: 253900307

Charging Party:	Respondent:
Kathleen M. Abbey	Sverdrup Technology Corp.

The Commission has reviewed the investigation of this charge of employment discrimination and all supplemental information furnished. Based upon this review, we agree with the determination issued by our field office and hereby issue a final determination that the evidence obtained during the investigation does not establish a violation of the statute. Therefore, the Commission dismisses and terminates its administrative processing of this charge.

As the charge alleged a Title VII violation, this is notice that if the Charging Party wishes to pursue this matter further, (s)he may do so by filing a private action in Federal District Court against the Respondent(s) named above within 90 days of receipt of this Determination.

IF CHARGING PARTY DECIDES TO SUE, CHARGING PARTY MUST DO SO WITHIN 90 DAYS FROM THE RECEIPT OF THIS DETERMINATION; OTHERWISE THE RIGHT TO SUE IS LOST.

On Behalf of the Commission;

Michael Dougherty
Director
Determinations Review Program

Enclosure: Information Sheet on Filing Suit in Federal District Court

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
40 Vantage Way Suite 202
Nashville, TN 37228

November 30, 1990
EEOC Charge #253-90-0307

Charging Party:
Kathleen M. Abbey
Cary, NC 27511

Respondent:
Sverdrup Technology
Tullahoma, TN 37388

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended.

All requirements for coverage have been met. Charging Party alleges that she was discriminated against in violation of Title VII in that she was refused employment with Respondent because of her sex (female).

Examination of the evidence indicates Charging Party was not hired because she was not qualified for the five (5) positions which Respondent was funded for. Although Charging Party was given a written offer of employment, this offer was contingent upon four factors which were clearly stated in the offer. Other persons male and female, received contingent offers of employment and were not hired for the same reasons as Charging Party. Respondent employs around 200 persons of which 23% are female and 9.5% female Engineers.

Based on the analysis, I have determined that the evidence obtained during the investigation does not establish a violation of the statute.

This determination does not conclude the processing of this charge. If the Charging Party wishes to have this determination reviewed, she must submit a signed letter to the Determinations Review Program which clearly sets forth the reasons for requesting the review and which lists the charge number and the Respondent's name. Charging Party must also attach a copy of this Determination to his letter. These documents must be personally delivered or mailed (postmarked) on or before December 14, 1990 to the Determinations Review Program, Office of Program Operations, EEOC, 1801 L Street, NW Washington, DC 20507. It is recommended that some proof of mailing, such as a certified mail receipt, be secured.

If the Charging Party submits a request by the date shown above, the Commission will review this determination. Upon completion of the review, the Charging Party and Respondent will be issued a final determination which will contain the results of the review and what further action, if any, the Commission may take. The final determination will also give notice, as appropriate, of the Charging Party's right to sue.

If the Charging Party . . . . The Commission's regulations governing no cause determinations are printed inTitle 29, Code of Federal Regulations, Section 1601.19.

On Behalf of the Commission
Rosetta Miller-Perry, Director
Nashville Area Office

Enclosures: Information Sheet on Filing
Suit in Federal District Court

IN THE SUPREME COURT OF ALABAMA

February 28, 1997

1951510

Ex parte Sverdrup Corporation and Sverdrup Technology, Inc. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Kathleen M. Abbey v. Sverdrup Corporation and Sverdrup Technology, Inc.) (2941150) (Madison: CV-91-373)

NOTICE

The application for rehearing filed in this cause is overruled. No opinion written on rehearing.

HOUSTON, J. - Hooper, CJ., Maddox, Shores, Kennedy, Cook, Butts, and See, JJ., concur.

Robert G. Esdale
Clerk, Supreme Court of Alabama

May 17, 1996

THE COURT OF CIVIL APPEALS OF ALABAMA

RE: **2941150**

Kathleen M. Abbey v. Sverdrup Corporation and Sverdrup Technology, Inc. (Appeal from Madison County Circuit Court: CV-91-373).

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals:
Application for Rehearing Overruled. No opinion written on rehearing. 39 (k) Motion Denied.

John H. Wilkerson, Jr., Clerk
Court of Civil Appeals

Title VII of the Civil Rights Act of 1964

The following is the text of Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000e. The Civil Rights Act of 1991 (Pub. L. 102-166) (CRA) amends several sections of Title VII. These amendments appear in boldface type.

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. [Section 703]

(a) It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer

for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor–management committee controlling apprenticeship or other training or retraining, including on–the–job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this subchapter,

(1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor–management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and

(2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation,

association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor–management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist–action or Communist–front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) Not withstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if-

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a

bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of title 29 [section 6(d) of the Fair Labor Standards Act of 1938, as amended].

(i) Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor–management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with

the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) (1) (A) An unlawful employment practice based on disparate impact is established under this title only if-

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B) (i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.

(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) (1) (A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws-

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had-

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to-

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.

OTHER UNLAWFUL EMPLOYMENT PRACTICES
SEC. 2000e-3. [Section 704]

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor–management committee controlling apprenticeship or other training or retraining, including on–the–job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor–management committee controlling apprenticeship or other training or retraining, including on–the–job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor–management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

ENFORCEMENT PROVISIONS

SEC. 2000e-5. [Section 706]

(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title [section 703 or 704].

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor–management committee controlling apprenticeship or other training or retraining, including on–the–job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor–management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be

made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

....

(e) (1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

....

(f) (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the

respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section, is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment

of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his

principal office. For purposes of sections 1404 and 1406 of title 28 [of the United States Code], the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(g) (1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2) (A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title [section 704(a)].

(B) On a claim in which an individual proves a violation under section 2000e-2(m) of this title [section 703(m)] and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court-

(i) may grant declaratory relief, injunctive relief (except as

provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title [section 703(m)]; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) The provisions of chapter 6 of title 29 [the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 105-115)] shall not apply with respect to civil actions brought under this section.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, title 28 [United States Code].

(k) In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of title 5 [the Administrative Procedure Act].

Title 29; Subtitle B; CHAPTER XIV; PART 1610;
Subpart A; Sec. 1610.17 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in 552(b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence, and matters involving personal privacy.

(b) Section 706(b) of title VII provides that the Commission shall not make public charges which have been filed. It also provides that (subsequent to the filing of a charge, an investigation, and a finding that there is reasonable cause to believe that the charge is true) nothing said or done during and as a part of the Commission's endeavors to eliminate any alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion may be made public by the Commission without the written consent of the parties concerned; nor may it be used as evidence in a subsequent proceeding. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of section 706(b) shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than 1 year.

(c) Section 709 of title VII authorizes the Commission to conduct investigations of charges filed under section 706, engage in cooperative efforts with State and local agencies charged with the administration of State or local fair employment practices laws, and issue regulations concerning reports and record-keeping. Section (e) of section 709 provides that it shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under section 709 prior to the institution of any proceeding under the act involving such information. Any officer or employee of the Commission who shall make public

in any manner whatever any information in violation of section 709(e) shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than 1 year.

(d) Special disclosure rules apply to the case files for charging parties, aggrieved persons on whose behalf a charge has been filed, and entities against whom charges have been filed. The special disclosure rules are available in the public reading areas of the Commission. Under sections 706 and 709, case files involved in the administrative process of the Commission are not available to the public.

(e) Each executed statistical reporting form required under part 1602 of this chapter, such as Employer Information Report EEO-1, etc., relating to a particular employer is exempt from disclosure to the public prior to the institution of a proceeding under title VII involving information from such form.

(f) Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) explicitly adopts the powers, remedies, and procedures set forth in sections 706 and 709 of title VII. Accordingly, the prohibitions on disclosure contained in sections 706 and 709 of title VII as outlined in paragraphs (b), (c), (d), and (e) of this section, apply with equal force to requests for information related to charges and executed statistical reporting forms filed with the Commission under the Americans with Disabilities Act.

(g) Requests for information relating to open case files covering alleged violations of the Equal Pay Act (29 U.S.C. 206(b)) or the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) will ordinarily be denied under the seventh exemption of the Freedom of Information Act as investigatory records compiled for law enforcement purposes.

(h) The medical, financial, and personnel files of employees of the Commission are exempt from disclosure to the public. (40 FR 8171, Feb. 26, 1975, as amended at 45 FR 40605, June 16, 1980; 56 FR 29579, June 28, 1991)-FF- 97/02/26

Title 29; Subtitle B; CHAPTER XIV; PART 1610; Subpart A

Sec. 1610.7 Where to make request; form.

(a) Requests for the following types of records shall be submitted to the regional attorney for the pertinent district, area or local office, at the district office address listed in Sec. 1610.4(c) or, in the case of the Washington Field Office, shall be submitted to the regional attorney in the Baltimore District Office at the address listed in Sec. 1610.4(c):

(1) Information about current or former employees of a field office;

(2) Existing non-confidential statistical data related to the case processing of a field office;

(3) Agreements between the Commission and State or local fair employment agencies operating within the jurisdiction of a field office; or

(4) Materials in field office investigative files related to charges under: Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq); the Equal Pay Act (29 U.S.C. 206(d)); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.); or, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(b) A request for any record which does not fall within the ambit of subparagraph (a) of this section, or a request for any record the location of which is unknown to the person making the request, shall be submitted in writing to the Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW., Washington DC 20507.

(c) A request must be clearly and prominently defined as a request for information under the Freedom of Information Act. If submitted by mail, or otherwise submitted under any cover, the envelope or other cover must be similarly identified.

(d) When a request is one which by nature should properly be directed to the Legal Counsel, or a regional attorney, such request shall not be deemed to have been received by the Commission until the time it is actually received by the appropriate official.

(e) Any Commission official who receives a written Freedom of Information request shall promptly forward it to the appropriate official specified in paragraph (a) or (b) of this section. Any Commission official who receives an oral request under the Freedom of Information Act shall inform the other person making the request that it must be in writing and also inform such person of the provisions of this subpart. (45 FR 40604, June 16, 1980, as amended at 47 FR 46275, Oct. 18, 1982; 52 FR 4902, Feb. 18, 1987; 54 FR 32062, Aug. 4, 1989; 56 FR 29578, June 28, 1991) -FF- 97/02/26

Title 29; Subtitle B; CHAPTER XIV; PART 1611
Sec. 1611.13 Specific exemptions.

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC-1 (Age and Equal Pay Act Discrimination Case Files), EEOC-3 (title VII and Americans With Disabilities Act Discrimination Case Files) and EEOC/GOVT-1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act. The Commission has determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other Federal agencies in the course of investigations of charges and complaints that violations of title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans With Disabilities Act and the Rehabilitation Act have occurred. In some instances, agencies obtain information regarding unlawful employment practices other than those complained of by the individual who is the subject of the file. It would impede the law enforcement activities of the Commission and other agencies for these provisions of the Act to apply to such records.

(b) The subject individuals of the files in these systems know that the Commission or their employing agencies are maintaining a file on their charge or complaint, and the general nature of the information contained in it.

(c) Subject individuals of the files in each of these systems have been provided a means of access to their records by the Freedom of Information Act. Subject individuals of the charge files in system EEOC-3 have also been provided a means of access to their records by section 83 of the Commission's Compliance Manual. Subject individuals of the case files in system EEOC/GOVT-1 have also been provided a means of access to their records by the Commission's Equal Employment Opportunity in the Federal Government regulation, 29 CFR 1613.220.

(d) Many of the records contained in system EEOC/GOVT-1 are obtained from other systems of records. If such records are incorrect, it would be more appropriate for an individual to seek to amend or correct those records in their primary filing location so that notice of the correction can be given to all recipients of that information.

(e) Subject individuals of the files in each of these systems have access to relevant information provided by the allegedly discriminating employer as part of the investigatory process and are given the opportunity to explain or contradict such information and to submit any responsive evidence of their own. To allow such individuals the additional right to amend or correct the records submitted by the allegedly discriminating employer would undermine the investigatory process and destroy the integrity of the administrative record.

(f) The Commission has determined that the exemption of these three systems from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act is necessary for the agency's law enforcement efforts. (56 FR 29582, June 28, 1991) -FF- 97/02/26

Title 29; Subtitle B; CHAPTER XIV; PART 1614; Subpart F

Sec. 1614.605 Representation and official time.

(a) At any stage in the processing of a complaint, including the counseling stage Sec. 1614.105, the complainant shall have the right to be accompanied, represented, and advised by a representative of complainant's choice.

(b) If the complainant is an employee of the agency, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to agency and EEOC requests for information. If the complainant is an employee of the agency and he designates another employee of the agency as his or her representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to agency and EEOC requests for information. The agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. The complainant and representative, if employed by the agency and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the agency or the Commission during the investigation, informal adjustment, or hearing on the complaint.

(c) In cases where the representation of a complainant or agency would conflict with the official or collateral duties of the representative, the Commission or the agency may, after giving the representative an opportunity to respond, disqualify the representative.

(d) Unless the complainant states otherwise in writing, after the agency has received written notice of the name, address and telephone number of a representative for the complainant, all official correspondence shall be with the representative with copies to the complainant. When the complainant designates an attorney as representative, service of documents and decisions on the complainant shall be made on the

attorney and not on the complainant, and time frames for receipt of materials by the complainant shall be computed from the time of receipt by the attorney. The complainant must serve all official correspondence on the designated representative of the agency.

(e) The Complainant shall at all times be responsible for proceeding with the complaint whether or not he or she has designated a representative.

(f) Witnesses who are Federal employees, regardless of their tour of duty and regardless of whether they are employed by the respondent agency or some other Federal agency, shall be in a duty status when their presence is authorized or required by Commission or agency officials in connection with a complaint. -FF- 97/02/26

Court of Appeals Docking Statement
Excerpt from Appellants Docketing STATEMENT
Appeal to the Supreme Court of Alabama
August 5, 1996

XIII. ISSUES: Briefly summarize the issue(s) on appeal.

Trial court abused its discretion by 1) granting partial summary judgment to the defendants on a Title VII employment claim in a civil action containing multiple claims where pre-trial discovery process was incomplete; 2) denying reinstatement of Title VII claim where plaintiff's memoranda addressed original and current discovery issues, identified evidence required [sic: acquired] after initial ruling, discussed scope of the EEOC investigation, discussed the "de novo" nature of the EEOC determination, and presented a refutation of the defendants' pretextual account; 3) denying plaintiff opportunity to amend claims/pleadings where previous attorneys may have omitted necessary language or arguments and where evidence from pre-trial discovery obtained to date supports these charges; 4)

granting defendants' motion amending partial summary judgment to a final judgment and denying plaintiff's motions where defendants have based arguments for finality primarily on the failure of the plaintiff to retain counsel.

XIV. FACTS: Without argument, briefly summarize the facts to inform the court of the nature of the case.

Original complaint against Defendants was filed in Madison County Circuit Court and amended to include Title Seven Count on May 24, 1991 (served on May 23, 1991). This action was occasioned by defendants' refusal to perform their obligations pursuant to a written employment contract with plaintiff. The counts contained in the complaint are: Breach of Contract, Breach of Implied Contract, Promissory Estoppel, Unjust enrichment, Misrepresentation, Concealment, Discrimination. Facts relating to Discrimination Complaint:

1) After failure to resolve Discovery issues, the Plaintiff's attorney filed a Motion to compel Discovery on May 26, 1992 with a supporting memorandum. The Defendants filed a Memorandum in Opposition on June 19, 1992.

2) The Defendants filed a Motion for Partial Summary Judgment on the Discrimination Count on May 21, 1992. On June 10, 1992, the Plaintiff's attorney filed a Memorandum in Opposition to Defendants' Motion for Partial Summary Judgment.

3) At a May 26, 1992 pre-trial status conference, Judge T.N. Younter expressed an indication to grant the Plaintiff's Motion to Compel Production of Documents. (no transcript)

4) On July 20, 1992 Judge Younger signed and Order Granting Partial Summary Judgment with respect to Count VII, the Discrimination/Title VII claim

5) On January 7, 1993 Judge Younger partially granted the Plaintiff's Motion to Compel Documents.

6) From March through June 1993, the Plaintiff's attorneys obtained pre-trial discovery materials. Some materials became

available to the Plaintiff following the June 28, 1993 trial.

7) The June 28, 1993 trial (with respect to counts 1 - 6) ended in a mis-trial by jury and the civil action was placed on an administrative docket by Judge Younger.

8) On March 11, 1994 Judge Younger granted a motion for withdrawal by the Plaintiff's attorneys after the Plaintiff had submitted a motion to discharge the law firm for cause. The Defendants waived the right to removal and transfer to federal court for personal jurisdiction. (Transcript recorded)

9) The Plaintiff attempted unsuccessfully to obtain legal representation. At an October 7, 1994 pre-trial status conference, the Plaintiff indicated that she was working intensely with a local attorney who was reviewing pleadings, discovery etc. with the objective of representing the Plaintiff. (no transcript)

10) The local attorney was murdered soon afterward. Plaintiff submitted a motion for reconsideration of the original interlocutory partial summary judgment, pro se, prior to the Nov. 4 pre-trial status conference and indicated to the court that she planned to submit a memorandum supporting this motion in the near future. (no transcript)

11) On November 15, 1994 Judge T. N. Younger overruled the Plaintiff's Motion to Reconsider the Partial Summary Judgment.

12) Plaintiff retained a new attorney in Dec. 1994. This attorney indicated a reluctance to address the Title VII issue as it involved unrecorded conversations and actions with prior attorneys of which he had no knowledge. Plaintiff submitted a pro se motion requesting leave of the Court to re-instate Count VII and amend its language with accompanying memoranda on March 27, 1995 and May 30, 1995.

13) A hearing (no transcript) on the Plaintiff's motion was held by Hon. Loyd Little on April 26, 1995.

14) Defendants submitted a Motion to Amend the Partial Summary Judgment Order to Make the Same Final and Response to Plaintiff's Second Motion for Reconsideration

and Memoranda in Support thereof on June 13, 1995.

15) Plaintiff submitted a response to this motion and a request for an oral hearing on June 23, 1995.

16) Judge Loyd H. Little, Jr. signed an Order on July 26, 1995 [sic: June 26, 1995] denying the Plaintiff's motion and granting the Defendants' motion to amend the Partial Summary Judgment by adding the following language: The Court hereby makes an express determination that there is no just reason for delay in the entry of this Judgment and expressly directs the entry of Final Judgment in favor of the Defendant and against the Plaintiff as to Count VII.

During this time motions with respect to Discovery and relating to the other claims had been submitted.

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(denoted C-Exh in references to the Record on Appeal)
Approved on 11/7/95

37. RON BELZ
38. GREG QUINN
39. JOHN HARTIN
40. ROBERT LEMASTER
41. KATHLEEN ABBEY
42. Y-G LAURA LEE

43. National Science Foundation Statistical Tables
44. Plaintiff's Completed Employment Application (Mr. A.D. Harrison has original)
45. All EEOC documents not already contained in the exhibits of G. Quinn deposition
46. Graphs of Statistical Salary Data
47. Discovery Requests Regarding Task Orders (if not otherwise placed in the Record)

48. Copy of Pleadings sent by Cooper, Mitch to the Appellant
49. Appellant's Memorandum in Opposition to the Appellees' motion with the following specific designations: 1) Updated Evidentiary Statement: 2) Nov. 4, 1994 letter from Plaintiff to Judge Younger and John Wilmer
50. Exhibits from 3/27/95 pleading:
    1) two employment advertisements
    2) letter from plaintiff to attorney on Nov. 4, 1991
    3) cited employment record documents of John Fay, Marcus Thomas, et. al.

IN THE CIRCUIT COURT
FOR THE FIFTH JUDICIAL CIRCUIT OF ALABAMA

KATHLEEN M. ABBEY,	)	
	)	
PLAINTIFF,	)	CIVIL ACTION NUMBER:
	)	CV-91-0373-Y
SVERDRUP CORPORATION, and	)	
SVERDRUP TECHNOLOGY, INC.,)		
	)	
DEFENDANTS.	)	

AMENDED COMPLAINT
I. NATURE OF THE PROCEEDINGS

1. This action is occasioned by defendants' refusal to perform their obligations pursuant to a written employment contract with plaintiff. After securing plaintiff's signature on the employment contract, defendants submitted a copy of the employment contract, together with a copy of plaintiff's resume, to NASA as part of an effort to persuade NASA to select defendants for an engineering services contract at the Marshall Space Flight Center. After securing the NASA engineering services contract, defendants refused to employ plaintiff, thereby breaching their contractual obligations.

2. Plaintiff brings these claims for breach of express and implied contracts, promissory estoppel, unjust enrichment, misrepresentation, and concealment. She seeks specific performance of the contract, as well as compensatory and punitive damages for its breach and for the misrepresentation perpetrated upon her. In addition, she brings a claim for discrimination in violation of Title VII of the Civil Rights Act of 1964 for which she seeks compensatory damages and attorneys fees.

II. PARTIES

3. Plaintiff is an adult resident of North Carolina.

4. Defendant Sverdrup Corporation is a Missouri Corporation which is licensed to do business in Alabama and which maintains its principal place of business in Madison County, Alabama.

5. Defendant Sverdrup Technology, Inc. is a Tennessee Corporation which is licensed to do business in Alabama and which maintains its principal place of business in Madison County, Alabama.

III. FACTS

6. In January of 1988, plaintiff visited the Stennis Space Center (then known as NSTL) to interview with defendants regarding the possibility of becoming employed by them. This interview trip occurred at defendants' request and at their expense.

7. On September 22, 1988, defendants wrote to plaintiff, acknowledging her interest in becoming employed by them. This letter noted defendants' inability at that time to "make you a firm offer of employment" but expressed an intent to do so in the near future. In return, defendants asked that plaintiff continue her consideration of the position and grant them her permission to use her resume in the defendants' pursuit of the engineering support services contract at NASA's Marshall Space Flight Center.

8. On September 26, 1988, plaintiff signed and conveyed to defendants a "commitment of interest," granting defendants her permission to use her resume in their pursuit of the above described NASA contract.

9. On September 28, 1988, defendants wrote to plaintiff, extending to her an offer of employment as a Senior Engineer with defendant, Sverdrup Technology, Inc., "should we be successful in securing the contract to be awarded by NASA for

Engineering Services at Marshall Space Flight Center in Huntsville, Alabama." The offer included the following terms:

As we discussed in our recent phone call, the position offered is Senior Engineer, at an annual salary of $50,000.00. This is a firm offer of employment, contingent only upon our selection by NASA as the Engineering Support Contractor and upon the following conditions: that the enclosed application for employment be completed and returned, your satisfactorily passing a company-paid physical examination, and other conditions controlled by our anticipated contract with NASA. Of course, continuation of employment will be based upon satisfactory work performance and general business conditions.

The letter represented that "[i]f we are successful in securing the contract, we would desire that you report to work in the time period from mid-February to April 2, 1989." Finally, the offer requested plaintiff's signature, either in the space designated for acceptance of the offer or in the space designated for rejection of the offer.

10. On October 3, 1988, plaintiff signed the September 28, 1988 offer in the space designated for acceptance and forwarded the signed contract to defendants.

11. In late October of 1988, plaintiff left her employment as a Development Engineer with AMP, Inc. in reliance upon her written employment contract with defendants.

12. On February 15, 1989, defendants wrote to plaintiff, advising that "Sverdrup has been selected for final consideration [for the NASA contract] along with three other outstanding competitors. This success is due largely to professionals such as you who were selected for consideration on the Sverdrup staff." The letter further advised that the schedule for NASA's decision had been changed and that a mid-May selection date was anticipated, with the contract beginning on July 1, 1989. The letter concluded by advising plaintiff that defendants were "looking forward to this exciting opportunity of serving with you on challenging work for NASA/MSFC."

13. On February 28, 1989, defendants wrote to plaintiff,

advising that a positive discussion of defendants' proposal with NASA had occurred on February 24, and repeating the statement that Sverdrup had been selected for final consideration along with three competitors. This letter advised that "[t]his success is due largely to professionals such as you who were selected for leadership on the Sverdrup staff." In other respects, the February 28, 1989 letter was materially identical to the February 15, 1989 letter.

14. During this period, plaintiff maintained contact by telephone with the defendants, who continued to assure her that she would be placed in a position if defendants won the NASA contract.

15. On May 22, 1989, defendants wrote to plaintiff, advising that Sverdrup had won the above-described NASA contract, "thanks to your help and a lot of hard work." This letter advised plaintiff that defendants would subsequently "be in a position to advise you of the status of your application for employment."

16. On July 3, 1989, defendants wrote to plaintiff, advising that their Manager of Structures and Dynamics was, "based on your resume, ...considering you for a position on the ECLSS team ...."

17. Plaintiff responded to this July 3, 1989 letter by arranging, at defendants' request, for a trip to their Huntsville office. During the summer of 1989, plaintiff did travel as defendants' guest to the Marshall Space Flight Center. Further, plaintiff cooperated in providing defendants with full details regarding her experience, training and expertise in the areas which defendants discussed with her.

18. On August 31, 1989, plaintiff wrote to defendants, noting that she had accepted the September 28, 1988 written offer from S"erdrup for the position of Senior Engineer. Plaintiff noted that she still had not been hired and reminded defendants of her continued interest in the position offered. She further requested that she be notified of the status of this matter and that a starting date be discussed.

19. On September 28, 1989, defendants responded to plaintiffs' letter of August 31, 1989 by assuring her, in writing, that she would be "given consideration" for assignment to a task upon defendants' receipt of a "Task Order" from NASA containing a requirement "for a person with your unique professional qualifications."

20. To the extent that she has been permitted by defendants to do so, plaintiff has fully performed all obligations under her written employment contract with defendants.

21. Any conditions precedent or contingencies to defendants' obligations under the written employment contract with plaintiff have been satisfied.

22. Defendants have failed and refused to perform their obligations pursuant to their written employment contract with plaintiff.

IV. COUNT ONE: BREACH OF CONTRACT

23. Plaintiff incorporates by reference all foregoing paragraphs.

24. As described above, defendants have breached their employment contract with plaintiff by failing and refusing to place her in the position of Senior Engineer as specified in the contract.

25. Defendants' breach was wilful and has caused plaintiff to lose back pay and to suffer emotional distress and other damages, all of which were foreseeable to defendants.

WHEREFORE, PREMISES CONSIDERED, plaintiff demands judgment against defendants for compensatory damages, interest, the costs of this action and such other relief as the Court deems just. Plaintiff also demands specific performance of her employment contract.

V. COUNT TWO: BREACH OF IMPLIED CONTRACT

26. Plaintiff incorporates by reference all foregoing paragraphs.

27. Defendants' above-referenced communications with plaintiff, coupled with all of the above-referenced surrounding circumstances, created a contract or contracts implied in law or in fact or both. Such contract(s) requ:ire(s) defendants to employ plaintiff as a Senior Engineer in defendants' performance of the engineering support contract at the Marshall Space Flight Center.

28. Defendants' breach has caused plaintiff to lose back pay and to suffer emotional distress and other damages, all of which were foreseeable to defendants.

WHEREFORE, PREMISES CONSIDERED, plaintifff demands judgment against defendants for compensatory damages, interest, the costs of this action and such other relief as the Court deems just. Plaintiff also seeks specific performance of her employment contract.

VI. COUNT THREE: PROMISS0RY ESTOPPEL

29. Plaintiff incorporates by reference all foregoing paragraphs.

30. In making the above-described communications to plaintiff, defendants expected or reasonably should have expected to induce plaintiff to forego continued employment at AMP, Inc., to forego other possibilities for employment, and otherwise to rely upon the "firm offer" which she had accepted.

31. In reasonable reliance upon these communications, plaintiff did forego her current employment and possibilities for other employment; and plaintiff otherwise reasonably and detrimentally relied.

32. As a direct and proximate result of her reliance, plaintiff

has been damaged by loss of salary and other losses. The cause of justice requires that plaintiff receive from defendant compensatory damages for those losses.

WHEREFORE, PREMISES CONSIDERED, plaintiff demands judgment against defendants for compensatory, interest, the costs of this action and such other relief as the Court deems just. Plaintiff also demands specific performance of her employment contract.

VII. COUNT FOUR: UNJUST ENRICHMENT

33. Plaintiff incorporates by reference all foregoing paragraphs.

34. Defendants intended to enhance, and did enhance, their effort to secure the NASA engineering services contract by forwarding to NASA copies of plaintiff's signed employment contract and resume.

35. By benefitting from their use of plaintiff's resume and of her acceptance of their "firm offer," and then refusing to hire plaintiff after the NASA contract had been awarded, defendants have been unjustly enriched at plaintiff's expense.

WHEREFORE, PREMISES CONSIDERED, plaintiff demands judgment against defendants for compensatory damages, interest, the costs of this action and such other relief as the Court deems just. Plaintiff also demands specific performance of her employment contract.

VIII. COUNT FIVE: MISREPRESENTATION

36. Plaintiff incorporates by reference all foregoing paragraphs.

37. Defendants intentionally induced plaintiff to accept their "firm offer of employment."

38. At the time defendants made their "firm offer of employment," defendants did not intend to be bound by the terms of the offer, as communicated in their September 28,

1988 letter to plaintiff.

39. Defendants intended at the time they extended the "firm offer" and received plaintiff's signed acceptance, to treat her, after receiving the potential NASA contract, as a mere applicant who would only be considered for employment.

40. At the time the "firm offers' was made, defendant knew that the representations made in the offer, as contained in their September 28, 1988 letter to plaintiff, were false, or defendants, without knowledge of the true facts, recklessly misrepresented them.

41. Defendants made the false representations wilfully and with the intent to deceive plaintiff.

42. Plaintiff reasonably and detrimentally relied upon defendants' offer and representations, by foregoing continued employment with AMP, Inc. and future employment possibilities; and plaintiff otherwise reasonably and detrimentally relied.

43. As a direct and proximate result of her reliance upon defendants' representations, plaintiff suffered loss of employment, loss of salary, emotional distress, and other losses, all of which were foreseeable to defendants.

WHEREFORE, PREMISES CONSIDERED, plaintiff demands judgment against defendants for compensatory and punitive damages, interest, the costs of this action and such other relief as the Court deems just.

IX. COUNT SIX: CONCEALMENT

44. Plaintiff incorporates by reference all foregoing paragraphs.

45. Under the particular circumstances described above, defendants were obligated to inform plaintiff that her acceptance of their "firm offer of employment" would not be considered an employment contract, and was, according to defendants' intention at the time, not an offer upon which plaintiff could prudently rely if she accepted it.

46. Under the particular circumstances described above, defendants were obligated to inform plaintiff that their "firm offer" of employment constituted, according to defendants' intention at the time, nothing more than defendants' agreement that, even if defendant secured the NASA contract, plaintiff would be deemed a mere applicant if she accepted the offer and that her "application" would then be "considered" in the future.

47. Defendants' concealment of the above-referenced facts and intentions caused plaintiff reasonably to forego her current employment with AMP, Inc. and future employment possibilities; and plaintiff otherwise reasonably and detrimentally relied.

48. Defendants' concealment was wilful and was intended to cause plaintiff to alter her position as she did.

49. Ae a direct and proximate result of this concealment, plaintiff suffered loss of employment, loss of salary, emotional distress and other losses, all of which were foreseeable to defendants.

WHEREFORE, PREMISES CONSIDERED, plaintiff demands judgment against defendants for compensatory and punitive damages, plus interest, the costs of this action and such other relief as the Court deems just. Plaintiff also seeks specific performance of her employment contract.

X. COUNT SEVEN: DISCRIMINATION

50. Plaintiff incorporates by reference all foregoing paragraphs.

51. At the time she accepted defendant's September 28, 1988 offer of employment, plaintiff completed and returned to the defendant an application for employment.

52. In her application for employment plaintiff disclosed that she had filed a charge of discrimination with the Equal opportunity Commission ("EEOC") against a prior employer.

53. Plaintiff discussed the status of her application with a

representative of defendants in April, 1989.

54. Plaintiff was labelled by defendants as "nothing but trouble."

55. Defendants refused to hire plaintiff because she opposed an unlawful employment practice or because she filed a charge alleging an unlawful employment practice in violation of § 704 of Title VII, 42 U.S.C. § 2000e-3.

56. On or about December 12, 1989 plaintiff filed a charge of discrimination against defendants with the EEOC.

57. On or about February 28, 1991, the EEOC issued a right to sue letter.

58. As a direct and proximate result of defendant's unlawful employment practice, plaintiff has suffered loss of employment, loss of salary, lost earning capacity and has incurred attorneys fees.

WHEREFORE, PREMISES CONSIDERED, plaintiff demands judgment against defendants for compensatory damages plus interest, the costs of this action and attorneys fees.

Jay Smith.
Attorney for Plaintiff

OF COUNSEL:
COOPER, MITCH, CRAWFORD,
KUYKENDALL & WHATLEY
Suite 201
409 North 21st Street

Abbey's Outline of Events Submitted to the EEOC

Summer 1987: Resume submitted to Sverdrup Technology, Inc.

Jan. 1988: Sverdrup arranges interview at NSTL in Mississippi. Amp Inc. extends an offer of employment while I am waiting to hear from Sverdrup. Greg Quinn indicates that Sverdrup has decided to transfer employees from other

locations to Stennis Center and I accept the position with AMP.

Aug. 1988: Resume submitted again in response to advertisement in Aviation Week and Space Technology.

September 1988: Sverdrup representative calls my number in North Carolina and indicates that Sverdrup wants to include my resume when submitting the bid for the Marshall contract. The first letter which requests a commitment of interest arrives. It is signed and returned immediately.

This is followed by two other phone calls. In one, Greg Quinn requests salary information because "Sverdrup has decided to make you an offer". A letter dated Sept. 28 arrives and my husband forwards it to Pennsylvania. The letter states that Sverdrup would like to make a firm offer for the position of senior engineer with an annual salary of $50000 subject to awarding of the support services contract to Sverdrup. A few other contingencies are also listed. An application form is enclosed and both application and acceptance are completed and returned via Express Mail. One or two phone calls are placed by me to the 800 number.

Oct. 1988: I submit my resignation to AMP Inc. and work through the end of October.

Dec. 1988: I call to determine the status of the NASA proposal. Toward the end of December I learn that the schedule may slip and the award will not be decided until after the original date of Feb. 2. (Calls made on the 800 number). I apply for another position advertised by Sverdrup in AviationWeek and Space Technology.

Feb. 1989: The original date for the awarding of the contract passes. In phone calls to Sverdrup I am told that the new date is now March 15. (Usually my contact was Greg Quinn or Kay Gilliland). About this time, the EPA in Durham schedules an interview with me. I call Sverdrup to determine whether they will guarantee a position if the Marshall contract was not awarded. The personnel in Tullahoma respond that it is not possible to guarantee a position if Sverdrup does not

win the contract. However, no indication was made that if the contract was awarded that a job was anything other than certain. No mention of further interviews.

During the first week of February someone whom I had not previously met calls to discuss the contract in very general terms. In response to my explicit questions, he explains that the initially, I have been assigned to the Non-metallic materials division. After the contract work begins, NASA will request certain tasks and these will be assigned to the Sverdrup personnel by the Sverdrup managers. I suggest that more discussion should will be required later in order to match the job to the individual experiences. I certainly did not receive the impression that any Sverdrup employee would not receive a task or that further interviews would be involved.
March 15:1989 Announcement of the NASA contract is delayed until mid May.

Apr. 4, 1989: I call the Cleveland branch of Sverdrup concerning an advertisement which has appeared in Aviation Week and Space Technolology. Eventually I reach Mr. Bruce Cantwell who refers me to a staff member named Mike Barden (surname spelling uncertain). Mike indicates that I have been rejected for the position applied for in December. Much of the conversation revolves around credentials. I propose that my experience qualifies me for consideration for some positions listed by Sverdrup and requiring engineering degrees. I discuss two reasons: 1) Many technical leaders in the specialties have earned their own academic degrees in a diversity of disciplines: chemistry, math, physics, and engineering. Many well known researchers are highly regarded although the original degree was not in the specially which they later developed,and 2) Equivalent experience should be considered for women especially since they were once barred from some engineering curricula.

To require degrees in mechanical engineering when someone with a chemistry degree can demonstrate equivalent experience seems discriminatory particularly for

someone in my age group. Mr. Barden calls my referece to the existence of past discrimination"bull-shit". I express horror at the use of obscenities, terminate the phone call and calle Mr. Bruce Cantwell. Eventually I receive a letter indicating that someone else has been selected for the position advertised in Dec. 1988.

On the following day, I notify representatives of Sverdrup in Tullahoma of our very unsatisfactory conversation. Both Kay Gilliland and Greg Quinn relate that the Cleveland group operates very independently of the headquarters structure.

Note here: I am familiar with several areas at Lewis in which Sverdrup provides staff. In the microgravity area, several experiments use techniques in which I have a great deal of experience such as laser light scattering. Sverdrup organized a conference in the fall of 1988 concerning the uses of laser light scattering in microgravity and had invited my postdoctoral advisor, former co-workers and former acquaintances to speak.

May 1989: Toward the end of May, Sverdrupis awarded the support services contract at Marshall.

May 26: I receive a letter dated May 22. The letter indicates that I am being considered for a position. I call Kay Gilliland in Tullahoma for a clarification and she explains that some people such as myself received offers; others did not and were considered as applicants. The letter was composed in more general terms because it was sent to both groups.

June 16: I call Greg Quinn to discuss the position. He volunteers that only a few people such as myself had received written offers with specific dollar amounts. He promises that I will hear more during the first week of July.

June 26: Ron Belz calls and explains that the work on the Marshall contract will be planned via certain Work Authorization Requests. He further states that in the Materials

Section NASA had planned only 5 positions and that Sverdrup had anticipated more. He claims that there are no positions for which I would fit. "I rooked around and I don't see any good fit. We did not discuss technical qualifications in detail and I remind him that I had received a written offer. He reiterates that he had merely called to indicate the at this time there was no job for me.

June 30, 1989: Dr. Robert le Master calls and indicates that a potential position might exist in the life support systems area. I express some interest and he agrees to send a letter with more details. I receive his fetter and write to verify interest and to raise technial questions concerning the availability of the computing equipment end a program which I had arranged through MIT while waiting to hear of the Sverdrup contract. The MIT program would not necessarily conflict with Sverdrup hiring (Sverdrup's builing was still incomplete, The Marshall contract specified that most of the work would be performed off-site etc.)

July 5: I speake with Bob Le Master by phone and he reveals that the position with Sverdrup is at the level of journey manengineer, not senior engineer. I remind him that my offer describes the position as senior engineer. He argues that the position must be at the journey manengineer level because my degree is in chemistry.

July 7: I call Greg Quinn and Bob le Master to determine whether my letter has been received. Greg Quinn acknowledges that it had been received around noon on the 7. Bob le Master tells me that he has read, the letter and that their computer equipment would be compatible with my needs. He further indicates that the Sverdrup managers would conduct meetings during the following week to review th distribution of skills. During July, I visit the North Carolina Science and Technology Center and conduct a literature search concerning life support systems.

July 14: I call Bob le Master concerning the statue of the negotiations. He suggests that I visit Huntsville to discuss

the position in more detail and to give me an opportunity to discuss future options for transfer into other groups at Sverdrup with the relevant personnel.

Aug. 7: I visit Sverdrup Technology in Huntsville. The trip schedule is arranged entirely by Sverdrup. Bob le Master is absent and I am met by a more junior person. In the morning, I tour the space station mock-up and meet NASA contacts such as Dr. Randy Humphries.

Sverdrup arranges for a real estate agent-former corporate recruiter to discuss housing. Obviously, personal information is passed to this person.

Aug. 8: I remain in Huntsville an additional day at my expense and visit NASA personnel in the Materials and Space Science Labs.

Aug. 9: I place a few phone calls to representatives in both Sverdrup and NASA life support systems area at Marshall.

Aug. 11: I call Mr. John Hartin,Vice-president and manager at Huntsville. He indicates that Sverdrup does not believe that there is a fit for me.

Aug. 21: I speak with Mr. Glen Northley, executive vice-president of SverdrupTechnology in Tullahoma. He states that we will look into the situation but that the NASA work authorization requests are worded such that Sverdrup has little latitude when selecting people.

Sep. 1: I send letter to Mr. Jack Whitley, president of Sverdrup Technology.

Sep. 10: I send letter to Dr. J. Littles director of lab at Marshall.

Oct. 1989: I received the letter from the Sverdrup attorney indicating that there was no job for me.

COMPANY CONFIDENTIAL MEMORANDUM
MEMO TO: JOE WILLIAMS FROM: GREG QUINN
DATE: 2/1/90
SUBJECT: RESPONSE TO EEO CHARGE OF
KATHLEEN ABBEY

Dr. Kathleen M. Abbey was contacted during the proposal generation phase in response to the NASA/MSFC Group Science and Engineering Support Services Contract RFP around September, 1988. Her resume was in my files at Sverdrup Technology Corporate Headquarters at 600 William Northern Boulevard, Tullahoma, TN. She had been previously recruited by me when I was supporting SSC recruiting efforts around November 1987. She had, in fact, interviewed at both our SSC and LeRC Groups prior to selection for our MSFC proposal. She had not received an offer or any continued interest from our other groups after the interviews.

Dr. Abbey was extended an offer of employment on September 28, 1988, for the MSFC proposed contract from Sverdrup Technology's marketing and proposal team. This offer was contingent upon four conditions, which were outlined in her offer letter (copy attached, Article I). One, the offer was contingent upon our selection by NASA as the Engineering Support Contractor. Two, upon receipt of a completed application for employment. Three, Dr. Abbey's successfully passing a company-paid physical examination. Four, other conditions controlled by our anticipated contract with NASA. It was due to the last reason that we were unable to confirm our contingent offer with Dr. Abbey.

In responding to the NASA RFP, the Materials and Processes Department was to contain 29 Sverdrup employees. After we were announced as the successful contractor for the MSFC S and E contract, and actually received the completed and

approved task directives from NASA around June of 1989, we evaluated the candidates in the proposal against our tasks from NASA. Although we estimated twenty-nine people in the Materials and Processes Department, we only received task directives for five (5) people (see copies of actual task directives attached - Article 2). Therefore, the number of actual employees needed for Materials and Processes verses what we responded to from the RFP yielded a difference of twenty-four (24) candidates. Also, the breakdown of skills needed for the approved tasks were different than anticipated. As a result of this, we found ourselves in a position where we did not have jobs for candidates we had spoken to during the proposal efforts. Dr. Kathleen Abbey was one of the affected candidates. As the situation which resulted in our not having a position for Dr. Abbey was the result of the conditions controlled by our contract with NASA, we unfortunately were not in a position to make her a confirmed offer of employment.

Dr. Ron Belz, acting manager of the Materials and Processes Department, summarized this situation in a memo to me dated January 25, 1990 (copy attached - Article 3).

In fact, not one of the twenty-nine proposed candidates were actually hired by Sverdrup's MSFC Group in the Materials and Processes Department. At the time of the contract award, which was delayed by more than five months, these candidates were either no longer available or, as in the case with Dr. Abbey, their backgrounds did not satisfactorily match the approved task directives given to us by NASA. A copy of the tentative organizational chart taken from the Sverdrup Technology proposal in response to the NASA RFP of the Materials and Processes Department is attached (Article 4). Also attached are copies of resume summaries of each candidate mentioned in the proposal (Article 5). Note that Dr. Abbey was one of seven other candidates who were in our proposal holding contingency offers who found themselves in

a similar situation. Dr. Abbey was not the only female in this situation. One other candidate holding a contingency offer like Dr. Abbey's is female, as were 5 other female candidates in the proposal but not holding a contingency offer of employment.

Since June of 1989, one other approved task directive was released by NASA which involved our hiring additional personnel in the Materials and Processes Department. None of the new task directives called for candidates with Dr. Abbey's background. A copy of the later released task directive is attached (Article 6). In addition, a printout showing all employees in the Materials and Science Department is attached, showing name, grade, and salary (Article 7). Copies of resumes of all employees in the Materials and Processes Department are also attached (Article 8). You will see that no task required a candidate with Dr. Abbey's background. You will also notice that one of the total number of employees in Materials and Processes Department is female.

Although we had no job for Dr. Abbey in the Materials and Processes Department, we did our best to attempt to place her in another department in our contract. Dr. Abbey was, in fact, interviewed for a potential opening in our Structures and Dynamics Department. She was contacted by phone and later interviewed in person. The candidates interviewed for this job were Dr. Abbey and two other candidates who were in our proposal and holding contingency offers whom we were not able to hire for the same reasons that we could not confirm Dr. Abbey's contingency offer. These were Dr. Laura Lee and Stephen Bishop. Copies of their resumes are attached (Article 9). Interview evaluation worksheets completed by Dr. Bob Lemaster, Manager of the Structures and Dynamics Department, at the time of the interviews on September 21, 1989, are attached "Article 10). A copy of the task directive that the candidates were interviewed against is also attached

(Article 11). You will notice that the numerical scores assigned to the candidates as a result of the interviews clearly indicated that Dr. Abbey was the lesser qualified of the three candidates interviewed for the job. The candidate hired for the position was Dr. Laura Lee, another female, who was employed effective 10/2/89. Note that Dr. Lee was also a candidate from the Materials and Science Department proposal.

Prior to the September 21, 1989, interview with Dr. Abbey, a reference check was performed on Dr. Abbey by Dr. Bob Lemaster, Manager of the Structures and Dynamics Department. The reference check proved very unsatisfactory. (copy of memo indicating reference check information is attached - Article 12).

Dr. Abbey had kept in constant communication with us during the time in which we were attempting to find suitable employment for her. Conversations were conducted by phone by me, Dr. Bob Lemaster, and Dr. Ron Belz. Dr. Abbey subsequently wrote Dr. Lemaster on July 1, 1989, and July 20, 1989. Copies of these letters are attached (Article 13).

After being notified verbally that her background did not adequately match the position for which she interviewed with Dr. Lemaster, Dr. Abbey called Glenn Norfleet, Sverdrup Technology Senior Vice-President, expressing her dissatisfaction that we had not yet hired her. She previously had written Dr. Jack Whitfield, Sverdrup Technology President on August 31, 1989 concerning employment with our MSFC Group. As you recall, Joe, you wrote Dr. Abbey on September 28, 1989 re-emphasizing the facts outlining our efforts to place her and that we had no available positions for

which she was qualified. A copy of this letter is attached (Article 14).

In your request the other day regarding Dr. Abbey's discrimination charge, you asked for a copy of our MSFC organization chart. A copy is attached (Article 15). Also attached are copies of current organization charts from the Materials and Processes Department (Article 16) and Structures and Dynamics Department (Article 17). You also requested a copy of our policies and procedures concerning employment. A copy of Policy 2210, Minimum Requirements, and Policy and Procedure 2220, Recruitment and Offers, are attached (Article 18).

I clearly believe that we did everything we could for Dr. Abbey. I am similarly convinced that she was discriminated against in no form or fashion. Since we hired no one for the original job she was considered for, and hired a female for the other position we interviewed her against, I see no way that she can prove a sex discrimination charge. I rest assured that we did the right thing in not hiring Dr. Abbey, as her qualifications were in no wise adequate for available opportunities at SVT/MSFC Group. If I can provide additional information, please let me know.

Greg Quinn

TEXT of Article 12 - Attached to Quinn Memo

August 21, 1989
To: File
FROM: R.A. LeMaster
SUBJECT: Reference Check on Dr. Kathleen Abbey

I contacted Mike Barton at our Lewis operation to discuss his knowledge of Dr. Abbey. She sent several resumes to Mike for positions he had advertised for. She was deemed by Mike to be unqualified for his positions and sent her a letter explaining that she was not being considered any further. She called Mike to plead her case and became obnoxious. She read Mike the "riot act" and accused him of not hiring her because she is a female. Mike did in fact hire a qualified female. Mike further checked with people at NASA Lewis who had known her during her tenure there. They all indicated that she was a "problem employee" and did not recommend talking to or even considering her for a job. Mike's overall assessment, "She is nothing but trouble".

TEXT of LETTER (C 57,58)
May 27, 1992

Paul Kelly, esquire
Segal, Roitman, & Coleman
11 Beacon St.
Boston, MA 02108

Re: Kathleen M. Abbey v. Sverdrup Corp. et al.

Dear Paul:

The status conference was held yesterday, and the Court indicated a general, preliminary intention to grant our motion to compel. A copy of our motion is appended. It was filed

with you memorandum. However, the Court is going to give Sverdrup "three or four weeks" to attempt to convince NASA to permit this production; he will then set the matter for hearing if this is not done; I urged the judge to go ahead and grant the motion, arguing that an order might prompt NASA. The judge, however, expressed a preference to wait and see whether Sverdrup can convince NASA to permit the production.

Also, the Defendants have moved for partial summary judgment on our Title VII claim. Attached are their motion and their memorandum in support of the motion. Our response to this motion must be filed by June 10, 1992. Please let me know whether you wish to draft our response, or you wish me to do it.

Because the Court understand that we need the documents we requested before deposing Defendant's witnesses, the Court will set this case for another status conference in "about two or three months".

Enclosed is a copy of the February 17, 1992 letter to me from John Wilmer, which constitutes informal interrogatory answers. I have written to him today to urge complete and formal responses.

John Wilmer stated in the course of opposing our motion to compel, that approximately fifty people received a "firm offer" letter like the one Dr. Abbey received, but that the NASA contract encompassed tasks which required far fewer jobs than Sverdrup had anticipated. I don't know whether we contend that this is incorrect, but we should be prepared to respond to such a contention.

John Wilmer indicated that he would be interested in knowing whether we have thought of a settlement number.

He also suggested that an offer would be better received if it did not include employment for our client.

Please call me when you have had a chance to review these materials.

Sincerely,

Jay Smith